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FEDERAL COMMUNICATIONS COMMISSION

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F.C.C. 73-1141

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of COMMUNITY TELE-COMMUNICATIONS, INC., d.b.a. ANACONDA CABLE TELEVISION, ANACONDA, MONT. For Certificate of Compliance	CAC-888 MTO42

MEMORANDUM OPINION AND ORDER

(Adopted October 31, 1973; Released November 6, 1973)

BY THE COMMISSION: COMMISSIONERS REID, WILEY AND HOOKS CONCURRING IN THE RESULT.

1. Community Tele-Communications, Inc., d/b/a Anaconda Cable Television, operator of a cable system at Anaconda, Montana, located within the Butte, Montana, smaller television market, has filed an application for a certificate of compliance, pursuant to Section 76.13(b) of the Commission's Rules, seeking to add the signal of Station KWGN-TV (Ind.), Denver, Colorado.[1] Anaconda presently carries the following television broadcast signals:

KUTV (NBC, Ch. 2), Salt Lake City, Utah
KCPX-TV (ABC, Ch. 4), Salt Lake City, Utah
KSL-TV (CBS, Ch. 5), Salt Lake City, Utah
KUED (Educ., Ch. 7), Salt Lake City, Utah
CJOC-TV (CBC, Ch. 7), Lethbridge, Alberta, Canada
KGVO-TV (NBC/ABC Ch. 13), Missoula, Montana
KBLL-TV (NBC/ABC Ch. 12), Helena, Montana
KXLF-TV (ABC/CBS Ch. 4), Butte, Montana

2. In its original application, Anaconda assumed that CJOC-TV was an independent station as defined in Section 76.5(n) of the Rules, and requested a waiver of Section 76.59(b), which provides that a cable system in a smaller television market may import sufficient television signals to permit carriage of the three major television networks and one independent station. In opposition to this application, Garryowen Butte TV, Inc., licensee of Station KXLF-TV, Butte, Montana, agreed that Station CJOC-TV, an affiliate of the Canadian Broadcasting Company, must be considered an independent station under Section 76.5(n) of the Commission's Rules, although CJOC-TV carries some U.S. network programming. Garryowen argued that

[1] Anaconda has a population of 9,624, and Anaconda Cable was serving 2,340 subscribers as of March 12, 1973. The cable system commenced operations in April, 1962, and currently has 12 channels available for carriage of broadcast and access services. Of these channels, eight are used for television signal carriage, one for background music, and one as a time-weather channel.

Anaconda's reason for requesting permission to carry an additional independent signal, to bring Anaconda residents "news, public affairs, sports and other programming attuned to the needs and interests of persons within the Rocky Mountain region," was not sufficient justification for a waiver.

3. Subsequently, Anaconda amended its application to assert that CJOC–TV is not an independent station because it carries more than ten hours of prime time U.S. network programming per week. If this were so, carriage of KWGN–TV (Ind.) Denver, Colorado, would be consistent with the Rules and no waiver would be needed. In support, Anaconda submits a program schedule of CJOC–TV purporting to show fourteen hours of weekly network program carriage by CJOC–TV. Garryowen asserts that five of the claimed network programs are not offerings of the three national networks, but are syndicated programs. In addition, it argues that CJOC–TV's schedule is not necessarily representative since CJOC–TV "has been known to shift programs around at a moment's notice," and the programs listed are not always carried on a weekly basis. Furthermore, the network programs carried by CJOC–TV are received not from the networks but directly from the producers. In its reply, Anaconda concedes *arguendo* that the five programs enumerated by Garryowen are indeed syndicated programs. But it encloses a telegram from CJOC–TV's production manager which shows that, nevertheless, ten and one-half hours of weekly prime time network programming are carried by CJOC–TV.

4. Anaconda has presented persuasive evidence to show that CJOC–TV generally carries in prime time more than ten hours of programming from the three major national television networks. The fact that CJOC–TV sometimes shifts programs around at short notice or does not carry listed programs some weeks does not refute that the station generally carries in prime time more than ten hours of network programming weekly. As to the argument that CJOC–TV does not receive the programs from the network but rather from the producers, we stated in *King Videocable Company*, FCC 73–146, 39 FCC 2d 600, that Section 76.5(n) of the Rules "focuses on the amount of U.S. network programming carried, not on the particular manner in which this carriage is effectuated." Hence, CJOC–TV cannot be considered an independent station under Section 76.5(n). Anaconda's carriage proposal is thus consistent with Section 76.59(b) of the Rules, and Garryowen's objections will be denied.

In view of the foregoing, the Commission finds that grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the application for certificate of compliance (CAC–888) filed by Community Tele-Communications, Inc., d/b/a Anaconda Cable Television, IS GRANTED, and an appropriate certificate of compliance will be issued.

IT IS FURTHER ORDERED, That the oppositions submitted on September 8, 1972, and on December 5, 1972, by Garryowen Butte TV, Inc., ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

F.C.C. 73-653

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE AND TELEGRAPH CO., HAWAIIAN TELEPHONE CO., ITT WORLD COMMUNICATIONS INC., RCA GLOBAL COMMUNICATIONS, INC., WESTERN UNION INTERNATIONAL, INC. Applications for Authority To Participate in the Construction and Operation of an 845 Circuit SF Submarine Cable System Between the U.S. Mainland and Hawaii	Files Nos. P-C-8241, P-C-8241-A, T-C-2441; T-C-2441-A, T-C-2437; T-C-2437-A, T-C-2436; T-C-2436-A
AMERICAN TELEPHONE AND TELEGRAPH CO., HAWAIIAN TELEPHONE CO., ITT WORLD COMMUNICATIONS INC., RCA GLOBAL COMMUNICATIONS, INC., WESTERN UNION INTERNATIONAL, INC. Applications for Authority To Participate in the Construction and Operation of an 845 Circuit SF Submarine Cable System Between Hawaii and Okinawa, Via Guam and for Authority To Acquire on an Undefeasible Right of User Basis, and To Operate for a Limited Period, Interest in a Commonwealth TASI-B System Between Sydney, Australia, and Vancouver, Canada	Files Nos. P-C-8479, P-C-8426, T-C-2533, T-C-2530, T-C-2532

MEMORANDUM OPINION ORDER AND CERTIFICATE

(Adopted June 14, 1973; Released June 15, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING. COMMISSIONER H. REX LEE ABSENT.

THE PLEADINGS

1. The Commission has under consideration the following:

a. A joint application filed under Section 214 of the Communications Act of 1934 by the American Telephone and Telegraph Co. (AT&T) and the Hawaiian Telephone Co. (HTC) on September 24, 1971, and applications, also filed under Section 214, by ITT World Communications Inc. (ITT) on November 10, 1971, RCA Global Communications, Inc. (RCA) on November 2, 1971, and Western Union International, Inc. (WUI) on September 24, 1971, for au

thority to construct and operate a submarine cable system between an existing cable station at San Luis Obispo, California, and an existing submarine cable station at Makaha, Oahu, Hawaii, and amendments filed thereto on April 7, 1972, August 18, 1972, May 18, 1972 and December 18, 1972, respectively.

b. Applications filed under Section 214 of the Communications Act of 1934 by AT&T, HTC, ITT, RCA, and WUI on September 29, 1972, January 17, 1973, January 8, 1973, October 27, 1972, and January 8, 1973, respectively, for authority to construct and operate a submarine cable system between an existing submarine cable station at Makaha, Oahu, Hawaii, and a proposed submarine cable station on the Island of Okinawa, Japan, via the Island of Guam, and for authority to acquire on an indefeasible right of user basis, and to operate for a limited period, interest in a Commonwealth TASI–B system between Australia and Canada, which will be used in conjunction with circuits in the proposed cable system.

2. The subject applications and amendments were listed on Commission Public Notices of Applications Accepted for Filing and copies of the applications and amendments, with notices extending the opportunity to comment, were mailed to interested parties including those required by statute. Comments regarding the Mainland-Hawaii segment of the proposed cable were filed by the Communications Satellite Corporation (Comsat) on October 27, 1971 and May 23, 1972. A Reply to Comsat's latter Comments was filed by AT&T on June 9, 1972. In addition, the State of Hawaii submitted a Petition to Institute Rate Inquiry Hearings, or, In the Alternative, to Deny the Application, on December 17, 1971. Comments on certain aspects of the State's Petition were filed by AT&T, HTC, WUI and ITT on January 25, 1972, and Oppositions to the State's Petition were filed by AT&T and HTC on the same date. On March 29, 1973, the Governor of the State of Hawaii submitted a letter withdrawing the Petition. Comments regarding the Hawaii-Okinawa segment of the proposed cable were filed by Comsat on January 29, 1973. Replies to Comsat's Comments were filed by AT&T, HTC, and ITT on February 13, 1973, and by RCA on February 20, 1973. Comsat replied to the matters raised by the carriers on March 2, 1973.

INTRODUCTION

3. According to AT&T, the proposed cable system constitutes the initial stage of a program for the expansion of the Pacific cable network which the United States international carriers and their principal foreign correspondents in the Pacific area consider essential in order to maintain a reasonable balance between cable and satellite circuits. It is proposed that this Pacific Cable Expansion Plan, which was agreed upon at a meeting held in Sydney, Australia, from August 10–13, 1971, be composed of two phases. Phase I, which, subject to timely authorizations, is scheduled for completion in 1974, would consist of:

(a) the proposed 845 circuit Mainland-Hawaii SF cable;
(b) the proposed 845 circuit Hawaii-Okinawa SF cable; and
(c) the proposed TASI system between Canada and Australia.

In addition, upon implementation of plans by other entities, additional facilities would provide extensions beyond Japan to various countries in Southeast Asia. Phase II of the project, envisioned by AT&T for completion in 1977, would consist of:

(a) a 4000 circuit SG cable between the Mainland and Hawaii;

(b) an 1840 circuit cable of British design and manufacture between Hawaii and Australia; and

(c) a 1600 circuit cable of Japanese design and manufacture between Hawaii and Japan.

4. The submarine cable system for which authorization is sought herein (items a and b under Phase I above) in the subject applications will consist of the Bell System designed SF type submarine cable with two-way rigid transistorized repeaters. The design is the same as the Second Florida-St. Thomas cable, which has been in service since August of 1968, and the TAT–5 cable, which has been in service between the United States and Spain since March of 1970. The core of the cable will be a central conductor consisting of a steel strand with a copper wrapping, insulated with a water impervious material (polyethelene) and surrounded by a return conductor. The cable will be armored where necessary in shallow water. It is proposed that the cable system have a basic (i.e., without TASI)[1] capacity equivalent of 845 two-way voice-grade circuits, each having a nominal bandwidth of 3 kilohertz. The cable system is proposed to be equipped initially to provide its full capacity of 845 circuits. Interconnection of the cable system is proposed with the domestic network system, and at Hawaii, Guam and Okinawa with domestic and other cable systems. In addition, the system will be capable of being interconnected with satellite earth stations on the Mainland, Hawaii, Guam and Japan. Therefore, until all the circuits in the cable system are needed to meet service requirements, the unused circuits will be available for protection of services in the event of outages of these other cable and satellite facilities.

5. The existing submarine cable stations at San Luis Obispo, California, Makaha, Oahu and Guam will be used to terminate the proposed system. A new cable station will be constructed to terminate the cable system on the Island of Okinawa. AT&T anticipates that no major plant additions will be required on the Mainland, Hawaii, or Guam.

6. It is estimated that the total Phase I system will involve an investment of $180,000,000. The details with respect to the various segments are set forth in the attached Table I. Annual revenue requirements[2] per half circuit will be $5,600 on the Mainland-Hawaii link and $11,700 on the link west of Hawaii. At present, as reported by AT&T, average annual cost per half circuit for existing cables are $21,300 for the Mainland-Hawaii link and $38,100 for the link west of Hawaii. Composite revenue requirement for all cables including those applied for herein would be $11,300 for the Mainland-Hawaii link and $17,700 for the link west of Hawaii, a reduction of over 50% from current requirements.

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[1] Time Assignment Speech Interpolation.

[2] Revenue requirements include operating and maintenance costs, depreciation return at the 8.5% allowed AT&T in Docket No. 19129, 38 FCC 2nd 213 (1972) and federal and other taxes. No factors are added for administrative and other overhead costs.

7. It is proposed that the cable system will be owned by AT&T, HTC, ITT, RCA, WUI, Kokusai Denshin Denwa Co. Ltd (KDD) and the Overseas Telecommunications Commission (Australia) OTC(A). AT&T will be responsible for engineering, procuring, laying and maintaining the cable portions of the system; for procuring the terminal equipment for the system, and for installing, maintaining and operating the terminal equipment on the Mainland and Guam. HTC will be responsible for installing, maintaining and operating the terminal equipment on Oahu. KDD will be responsible for installing, maintaining and operating the terminal equipment on Okinawa. The cable and associated terminal equipment on the Mainland, Oahu, Guam and Okinawa will be owned by the participants in common, in undivided shares, in proportion to the number of circuits assigned to them. KDD will be responsible for the construction of the cable station on Okinawa, and will own that station, subject to the indefeasible right of user of the station by the other participants to the extent required for the operation of the circuits in the system assigned to them. The specific proposed ownership shares are set forth in the attached Table I.

8. The proposed TASI–B system will consist of TASI units installed at Sydney, Australia, and Vancouver, Canada. The system will be constructed, maintained and owned by Commonwealth interests. The TASI–B system will be used, in conjunction with circuits in the Australia-Guam section of the SEACOM cable, the Hawaii-Guam and Mainland-Hawaii segments of the proposed new cable system, and the COMPAC cable, to provide additional circuits for service between Australia and the United States and between Australia and Canada and Europe. AT&T proposes to acquire a 23% interest in the capacity of the Australia-Canada TASI–B system. This interest will entitle AT&T to associate 33 basic cable circuits with the TASI system and derive therefrom the equivalent of 112 voice-grade circuits under normal operating conditions. AT&T proposes to use 14 of its circuits in the COMPAC cable and 19 of its circuits in the proposed cable system to provide the 33 basic circuits with the TASI system. The Commonwealth interests will use another 19 circuits in the proposed cable system and 19 in COMPAC, which when added to the AT&T 33 circuits will provide a total of 71 circuits associated with the TASI system, from which 242 equivalent circuits will be derived. The total capital cost of the TASI system is estimated to be $5 million, of which AT&T's share would be about $1.5 million. In addition, AT&T will pay the Canadian Overseas Telecommunications Commission (COTC) a pro rata share of the operating and maintenance costs of the Vancouver TASI unit, which share is estimated to be about $23,200 annually.

9. It is proposed that AT&T will retain its share of the TASI–B system, until such time as additional cables (Phase II) are approved and put into service, to alleviate any possible bottleneck in the Guam-Australia segment of the SEACOM cable. According to AT&T, when the Phase II facilities are put into service, it will sell its share of the TASI–B system to COTC at depreciated cost. Use of the proposed TASI system will reduce AT&T's requirements in the Guam-Australia

SEACOM cable segment to 19 basic circuits. This arrangement, together with the proposed sale of some of the circuits to the Commonwealth interests, will result in a substantial reduction in AT&T investment (about $1,900,000).

POSITIONS OF THE PARTIES

10. In the joint application filed on September 24, 1971, AT&T and HTC, seeking authority for the Mainland-Hawaii segment of the cable system, state that they are now using a total of 648 circuits for Transpacific traffic, 294 of which are being provided by cable (including TASI), 350 of which are being provided by satellite, and 4 of which are provided by high frequency radio. According to AT&T, there are no available cable circuits between the Mainland and Guam. Beyond Guam, AT&T has spare circuitry in the Transpacific cable (17 circuits), the Guam-Philippines cable (14 circuits) and the SEACOM cable from Guam to Australia (71 circuits). This available circuitry is of little use for traffic from either the Mainland or Hawaii and points beyond Guam, since there are no available cable circuits between the Mainland or Hawaii and Guam. Therefore, the joint applicants argue, without the proposed cable system all future growth in the Pacific will be by satellite. This, according to AT&T and HTC, represents a dangerous reliance on satellite facilities. It is therefore alleged that the proposed cable system will provide the diversity needed to protect the continuity and reliability of Pacific services.

11. The applicants propose that upon activation of the cable, satellite usage be frozen until the number of cable circuits in use equals the number of satellite circuits in use. Thereafter, cable and satellite circuits would be activated on a one-for-one basis. AT&T and HTC contend that this 50:50 formula will provide the reasonable parity between cable and satellite facilities we suggested in our *Statement of Policy and Guidelines*, Docket 18875, released June 25, 1971. The circuit estimates of the carriers are set forth as attachments hereto in Tables II and III.

12. AT&T and HTC base their arguments in favor of the cable in part upon circuit forecasts, based on estimates of traffic demand. Table II was submitted by AT&T and HTC as an appendix to the amendment to the Mainland-Hawaii cable application on April 7, 1972. Table III was submitted by AT&T in its application for the Hawaii-Okinawa cable on September 29, 1972. In addition there is also attached hereto Table IV, taken from the Comsat Comments on the Hawaii-Okinawa segment of the proposed cable system, submitted on January 29, 1973.

13. The record carriers' arguments in support of the proposed cable system are generally similar to those of AT&T and HTC. ITT, RCA and WUI emphasize the national security aspects of the cable system, suggesting that some customers specifically request cable circuits for defense reasons. Unless the proposed cable system is constructed, the record carriers contend, those needs cannot be met.

14. Comsat's Comments regarding the Mainland-Hawaii segment of the proposed cable system were filed October 27, 1971; and May 23, 1972. In those Comments, Comsat argues that the carriers have not

submitted factual data sufficient to support the grant of the subject applications for any use other than for Mainland-Hawaii traffic. In addition, Comsat notes that the applicants submit no justification for the proposed one-for-one circuit activation policy other than "balance". Comsat believes that this artificial notion of balance is a minor consideration and that any circuit activation policy must be based on the comparable number of paths, considering the built-in redundancy of satellite facilities and the inherent flexibility and reliability of the satellite system. Comsat also points out that, while the carriers advocate a one-for-one policy to achieve balance, a more realistic approach might be a "path-by-path" policy. The satellite system was planned to include a two-path satellite route across the Pacific. At present there is one Intelsat IV satellite operating in the Pacific Basin, launched early in 1972. Another Intelsat IV satellite to be launched as a Pacific spare/operational satellite is planned, but its early 1973 launch date has been delayed due to potential technical problems discussed later in this Order. According to Comsat, use of both of these paths would provide the necessary diversity. In summary, Comsat does not directly oppose the cable, but does suggest that Mainland-Hawaii traffic should be routed according to a path-by-path circuit activation policy, which would essentially mean two satellite circuits activated for each cable circuit activated. In connection with its general argument, Comsat calls attention to the fact that Intelsat IV satellite facilities in the Pacific provide sufficient circuit capacity to meet projected traffic demands for the entire Pacific region for the next several years.

15. In its reply to Comsat's Comments, AT&T disagrees with the path-by-path policy, urging that the proper concept is "reasonable balance" between cable and satellite circuits. AT&T also contends that it has submitted sufficient information to justify the cable for service beyond Hawaii. Accordingly, it argues that an authorization of the cable solely for Mainland-Hawaii service, as Comsat advocates, would prevent the most economical and efficient use of the cable and would not serve the public interest.

16. The State of Hawaii, through its Governor John A. Burns, submitted a Petition on December 17, 1971 to Institute Rate Inquiry Hearings, or In the Alternative, to Deny the Application of the Mainland-Hawaii segment of the proposed cable system. The State contended that the carriers have not submitted sufficient factual data to support their claim that a need exists for the facilities sought. Authorization of the Mainland-Hawaii segment of the proposed cable system would initially increase revenue requirements of the composite system serving Hawaii. Such an increase, according to the State, could not be justified if the foreseeable demands of users could be met more efficiently and economically through the use of existing facilities, e.g., satellites. Secondly, the State argues, present rate practices between the Mainland and Hawaii, whereby facilities installed to provide communications links between the Mainland and Hawaii have been considered international facilities, negotiated in the international arena, and tariffed separately, are discriminatory. Such practices resulted in Hawaiian users paying substantially higher costs for voice, record and data transmission between the Mainland and Hawaii than would be

the case if the identical transmissions were sent between two points elsewhere in the United States even though the two points may, in fact, be further apart from each other than the points between Hawaii and the Mainland.

17. The State alleges that the carriers' applications are insufficient in three specific areas as follows:

a. The carriers have simply assumed, without factual support, that a 50% parity must be maintained between cable and satellite;

b. The carriers have not shown that they are using their present facilities most efficiently; and

c. The carriers have suggested a possible 4,000-circuit SG cable in the near future, but have not indicated why a costly low-circuit SF cable is necessary in view of the potential SG cable.

18. On December 17, 1971, the Commission sent a letter to all the carrier participants suggesting that, if they intended to comment on the Petition of the State of Hawaii, they separately address the two aspects involved, the rate issues and the licensing issues. The Commission received replies from AT&T, HTC, ITT and WUI.

19. AT&T submitted Comments on the rate aspects of the State's Petition in which AT&T maintains that the rate treatment accorded the citizens of Hawaii is based on the State's unique geographical location and is not discriminatory. Moreover, claims AT&T, the citizens of Hawaii have had high quality service and generally favorable rate treatment. In commenting on the rate aspects, HTC denied any discriminatory treatment. Instead it blamed the higher rates on geographical location. HTC conceded that the concept of rate averaging needs exploration, but not in the context of the instant applications. In its Comments, ITT contended that Section 222 precludes any rate averaging by the international record carriers. Both WUI and ITT are also opposed to hearings on the rate aspects of the State's Petition, indicating that such hearings would unduly delay the authorization of the proposed cable system.

20. In their Oppositions to the Licensing aspects of the State's Petition, AT&T and HTC contend that they have in fact supplied the Commission with factual data to support the joint application. Moreover, they claim that there are sound operating reasons for advocating parity between cable and satellite facilities. AT&T claims that parity between cables and satellites is highly desirable, and indeed necessary to provide diversity of types of facilities and thus insure continuity of service, particularly with the growing widespread use of customer direct distance dialing in overseas and international communications.

21. AT&T further pointed out that all types of facilities are subject to outages, but different types of facilities are vulnerable to different types of outages. The use of a reasonable balance between facilities, it is urged, spreads the risk of outages and provides a higher degree of service reliability. Moreover, in answer to the Petition of the State of Hawaii, AT&T maintains that the existing cable facilities are being used to the greatest advantage and that the 4,000-circuit SG cable will not be available for Pacific service until 1977. By that time, at the current rate of growth, the cable-satellite imbalance would be exceedingly dangerous, contends AT&T.

22. In the January 29, 1973 Comments of Comsat filed in response to applications for the Hawaii-Okinawa segment of the cable system, Comsat discusses the entire Pacific cable program (Phase I and Phase II). Comsat believes that the Commission should consider the subject applications within the context of Docket No. 18875 in formulating a policy on Pacific region facilities. Consideration should also be given to the capability of existing facilities to satisfy predicted traffic demand and to the expected availability of advanced technology in cables and satellites. The key questions in Comsat's opinion, are:

a. The importance of an equal distribution of traffic between cable and satellite in the Pacific: and

b. whether there is economic justification for the proposed additional cable facilities from the standpoint of diversity, redundancy and reliability, in light of the present plan to maintain a spare satellite in orbit to restore a failed satellite or cable.

Comsat does concede that some distribution between cable and satellite facilities is desirable but fails to see the reason for an arbitrary formula of equal distribution. With an SG type cable expected in 1978, as shown in Phase II of the Pacific cable plan, the economic attractiveness of an SF type cable at this time is reduced according to Comsat.

23. Comsat's Comments contain an economic study comparing the costs of the Pacific cable system from 1974 through 1981 with the costs of meeting all traffic growth with satellites over the same period. Comsat contends that this study shows that the additional incremental cost for the new Pacific cable network during 1974–81 will be $639 million, which is the difference between the incremental cost of $909 million for additional cable and satellite facilities and the incremental cost of $270 million for satellite facilities alone. Basically, Comsat argues that the magnitude of the cost for diversity of media, as proposed by AT&T (i.e., equality between cable and satellite usage), is extremely high.

24. On February 13, 1973, AT&T filed a reply to the Comments of Comsat. AT&T argues that no reasons exist, within the full context of Docket No. 18875, for the policy for the Pacific Region to differ in any material respect from the "reasonable parity" policy established for the Atlantic Region. Any policy for the Pacific Region bearing reasonable relationship to the Atlantic policy would be acceptable to AT&T to prevent an imbalance of 82% satellite and 18% cable, which it believes would exist in 1975 should no additional Pacific cables be provided. AT&T points to the need for rapid action on the subject applications because of the possible withdrawal of the foreign correspondents from the joint program to develop a cable of their own. Therefore, no benefit would result in awaiting a formal statement of a policy for the Pacific Region.

25. AT&T further states that while claiming cable programs should await a Pacific policy statement. Comsat ignores consideration of such a policy in the case of satellite applications (e.g., the application of Comsat for the construction of three Intelsat IV–A satellites.[3]) Thus,

[3] The Intelsat IV–A satellites are intended to satisfy Atlantic region requirements, but could become available for Pacific region service in the 1978–9 time frame.

it is argued, Comsat implies that the Commission should use a double standard in processing cable and satellite applications.

26. AT&T further alleges that even when there is an in-orbit spare satellite most foreign Pacific earth stations are not protected by back-up stations and, therefore, should an unprotected earth station fail, a catastrophic interruption would occur. AT&T believes that Comsat's cost analysis is fallacious and does not conform to the reality of the physical facilities. For example, Comsat attempts to condense the cost of a 24-year life cable into a period of seven years in order to compare the cost of a satellite system having a seven-year life. Finally, it is alleged that the cables would be desirable from the point of view of national security.

27. On February 13, 1973, ITT filed a reply to the Comments of Comsat regarding the instant applications. ITT agrees with AT&T that Comsat would like the Commission to apply a double standard in processing cable and satellite applications. ITT believes there is no valid reason to await a rulemaking in Docket No. 18875 concerning the Pacific Region after the Commission's recent issuance of instructions to the U.S. representative to Intelsat to vote in favor of the Intelsat IV–A program. Regarding the costs contained in Comsat's Comments, ITT believes these costs to be a result of satellite oriented assumptions. Consideration of such extraneous figures and issues would advance nothing but the impedance of all major cable projects.

28. The Reply of Hawaiian Telephone Company was filed with the Commission on February 13, 1973, responding to Comsat's Comments of January 29, 1973. HTC feels that Comsat addresses itself to all Pacific cable plans rather than the subject matter of the applications in discussion. HTC, along with AT&T and ITT, believes that Comsat's cost analysis of the Pacific Region is full of inaccuracies and distortions. The cost economies asserted by Comsat are of little value and less comfort to the rate payers until claimed economies are translated into reductions in rates. HTC submits that it cannot meet its customers' requirements adequately or satisfactorily if it is compelled to resort to Comsat as the sole source of Pacific circuitry.

29. RCA Global Communications, Inc., on February 20, 1973, filed with the Commission a reply to the Comments of Comsat. It calls attention to the shortage of cable circuits in the Pacific, the need to provide diversification and redundancy of facilities to assure continuity of service, the requirements of the Department of Defense and other governmental and commercial users for cable circuits and the desires of the foreign entities that provision be made immediately for adequate cable facilities. RCA sees no reason for the Commission to adopt a satellite-only policy, which, RCA believes, is what the situation would be if the subject applications were denied. RCA, too, believes Comsat's economic presentation to be unpersuasive, misleading and without merit. To RCA, rate reductions by Comsat in the Pacific now seem possible, but so far have been deferred. Therefore, RCA submits that Comsat has presented no valid reasons why the applications for the proposed Transpac 2 cable system should not be promptly granted.

30. On March 2, 1973, Comsat filed a reply to the above reply comments of AT&T, ITT, HTC and RCA. Comsat reaffirms the main point in its earlier filing which was that the particular facilities proposed should be considered in the context of the existing facilities and their capability for serving the Pacific Region, as well as the cost to the public of those additional facilities. Also, Comsat still believes that the applications should be considered in the full context of the issues in Docket No. 18875.

31. On March 29, 1973, a letter was filed on behalf of the Governor of Hawaii wherein the Governor withdrew his December 17, 1971 petitions primarily in reliance upon an agreement between AT&T and HTC pursuant to which reductions would be made in rates between the mainland and Hawaii. According to that agreement AT&T and HTC would, upon approval of the proposed cable project, establish direct distance dialing rates for service between the mainland and Hawaii which are approximately 25% below current station rates and when the cable is actually in service they would file further reductions which in total would save mainland-Hawaii rate payers an estimated $30 million in tolls in 1975.

32. In addition to and apart from the proposed rate reductions between the mainland and Hawaii, AT&T by letter dated November 10, 1972, advised the Commission that upon receipt of authority to proceed with the cable project, it would immediately take steps to make final the negotiations it had been conducting with its correspondents for rate reductions. Such negotiations indicated to AT&T that, on the basis of the existing call volumes and duration, rate adjustments which would result in overall reductions in charges to customers of over 20% could reasonably be expected. AT&T further advised that from preliminary discussions, they believe agreement could be reached with correspondents accounting for at least one-third of AT&T's traffic beyond Hawaii to make such reductions effective during 1973. AT&T was further of the opinion that with continued negotiations, reductions of the aforementioned magnitude could be implemented with other correspondents between 1973 and the date for the opening of the cable.

DISCUSSION

33. The Commission has for some time now been engaged in determining the policy to be followed in the future licensing of facilities for overseas communications. In furtherance of this activity, the Commission instituted a proceeding by Notice of Inquiry issued on June 10, 1970,[4] on the policy to be followed in future licensing of facilities for overseas communications, and has received voluminous data from various interested parties. On June 24, 1971, it adopted a Statement of Policy and Guidelines [5] which was addressed to the licensing of additional trans-Atlantic facilities during the decade of the 1970's. At that time it reserved its position with respect to telecommunications services and facilities in other areas.

[4] In the matter of the Inquiry into Policy to be Followed in Future Licensing of Facilities for Overseas Communications, Docket No. 18875, FCC 70-620.
[5] 30 FCC 2nd 571, 1971.

34. In view of the applications now pending with respect to the provision of services by cable across the Pacific, it is essential that this matter be addressed from the point of view of services in this area. In this connection it is relevant to note that in Paragraph 7 of the Statement of Policy and Guidelines adopted June 24, 1971 it was stated: [6]

> 7. Upon consideration of the total record in this proceeding, including among other things, the foregoing statutory guidelines and viewpoints of the foreign administrations, we are of the opinion that our decision herein should be made within the following framework of policy:
>
> (a) the public interest requires that we promote the continued development of both cable and satellite technologies and their most effective and timely applications to meet future requirements for international communications services;
>
> (b) the public interest also requires that we authorize the most modern and effective facilities available via both cable and satellite technology with due regard for efficiency, economy, diversity and redundancy;
>
> (c) the public interest and due regard for the concerns of the Administrations which operate the foreign end of cables require that care should be taken to minimize the need for imposing artificial formulae to govern the distribution of traffic among available media;
>
> (d) the public interest requires that the economies available from each advance in technology be reflected in charges for service.

35. It appears to us that the principles set forth above have a general applicability and can serve as the basis for action on the pending applications for facilities to provide service in the Pacific Basin. What remains to be determined is whether these general principles as applied to the specific factual context in the Pacific area provide a basis for affirmative action on the applications before us. We shall therefore turn our attention to the factual context and assess the implications it has upon the general policies we have adopted.

36. First of all, it is to be noted that the Pacific Ocean Basin is an important communications area insofar as United States economic, national security and other national interest considerations are concerned. Although total volume of traffic exchanged between the contiguous states and the various points in the Pacific Ocean Basin is considerably less than that exchanged between the contiguous states and Europe,[7] present indications are that the area will assume increasing importance so far as communications are concerned during the balance of this decade. Developing interrelationships between the United States and the Peoples Republic of China, the emergence of Japan as a major economic power, the growth of trade with Indonesia, as well as the long-standing and continuing relationship with Commonwealth countries in the Pacific Ocean Basin, indicate that traffic may be expected to increase in the Pacific area. Finally, the State of Hawaii's need for the most efficient and economical facilities for interstate communications as well as to meet its international telecommunications requirements is self evident. The announced Commission policy [8] look-

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[6] Id. at p. 572.

[7] The Commission's records show that at the end of March 1973, the United States carriers (voice and record) as a group were using the equivalent of some 920 voice grade circuits to provide all types of communication service between the contiguous states and various points in the Pacific Ocean Basin including Hawaii. The Commission's records further show that at the end of March 1973 the aforementioned carriers were using somewhat more than 2100 voice grade circuits to provide service with trans-Atlantic points in Europe, Africa and the Middle East.

[8] Domestic Communications-Satellite Facilities, Docket No. 16495, 38 FCC 2d 665.

ing toward the integration of Hawaiian traffic into the domestic rate pattern will necessarily be accompanied by accelerating expansion in its need for interstate facilities and services. In view of all of the foregoing facts it is expected that, in the future, telecommunication requirements between the contiguous states and the various points in the Pacific Ocean Basin will continue to grow.

37. A second factor which is to be given consideration is the fact that in the Pacific Ocean Basin, populated areas and therefore areas which require telecommunication facilities, are widely scattered and separated by vast ocean areas. Even where such populated areas are contiguous to one another there are, with few exceptions, no well developed telecommunications facilities capable of inter-connecting two or more neighboring countries. Thus, the failure of a facility serving a particular country can, in the absence of diverse routes or redundant independent capacity, cut off that point from communication service until the failed facility is restored. This situation is in distinct contrast with the trans-Atlantic area where, particularly in Europe, there is a highly sophisticated network with the capability of providing alternate routes to most countries. In addition, there are numerous local cable and other facilities which interconnect Europe with North Africa and the Middle East. Thus, if a particular cable, satellite or earth station fails alternative routes are available for almost instantaneous restoration.

38. The above described situation in the Pacific is further compounded by the fact that there are relatively few cable facilities interconnecting the various inhabited areas. Those which are in operation are of an older vintage and have relatively low capacities.[9] It is to be noted that the situation in the trans-Atlantic arena differs greatly from that which obtains in the Pacific Ocean Basin. There are now in operation five separate United States trans-Atlantic cables (TAT 1 through TAT 5) with a capacity of well over 1200 voice grade circuits landing at three different points in Europe, i.e., United Kingdom, France and Spain. In addition, the Commission has authorized a 6th trans-Atlantic cable (TAT–6) which will have a capacity of some 4,000 voice grade circuits. Aside from these United States cables, there is also an 80 circuit cable now in operation between Canada and the United Kingdom (CANTAT 1). Furthermore, a second cable (CANTAT 2) between these two countries with a capacity of some 1800 voice grade circuits is under construction and scheduled to go into operation in 1974. The U.S. carriers have either IRU or other user rights in several hundred voice grade circuits in these two United Kingdom-Canada cables. To summarize then there are some 300 voice grade cable circuits now available between the North American continent and Hawaii and slightly in excess of 200 voice grade circuits west of Hawaii in both U.S. and Commonwealth owned facilities.

[9] There are two U.S. owned cables which run from California to Hawaii with a combined total capacity of less than 200 voice grade circuits. In addition, there is only one United States cable which runs west of Hawaii to Japan via Guam. This cable has a capacity of only 142 voice grade circuits. The Pacific Ocean Basin is also served by an 80 circuit cable owned by British Commonwealth interests and running from Vancouver to Australia via Hawaii and New Zealand. U.S. carriers have either indefeasible rights of user (IRU) or hold leases for a considerable number of circuits in these cables. There are other British Commonwealth cables which interconnect Hong Kong, Singapore and Australia with the U.S. trans-Pacific cable system at Guam.

There will be, upon completion of currently authorized facilities in the next few years, over 7000 voice grade cable circuits available in the trans-Atlantic area. Furthermore, there are or will be eight separate and distinct cable routes across the Atlantic, six of which are United States cables and only two currently across the Pacific, one of which is a United States cable.

39. In addition to cable facilities there are, of course, satellite facilities available in both the Atlantic and Pacific Ocean Basins. At the present time, the Pacific Ocean Basin is served by an Intelsat IV type satellite with a capacity in excess of 4000 voice grade circuits. The Commission has also authorized Comsat to participate in the launch and operation of a second satellite in this series which would serve as a spare/operational satellite in orbit for use in case of failure of the first and could be used to provide a diverse path for traffic to the extent that such use does not detract from its primary function to serve as a spare satellite. In the Atlantic region there are presently two Intelsat IV type satellites in orbit. One of these serves as the primary satellite for the entire Basin and provides inter-connection between earth stations in that Basin. The second serves as the major path satellite providing a higher capacity second satellite path between those countries operating two antennas in the Atlantic Basin. The combined capacity of these satellites exceeded then current requirements for Atlantic service (and according to the President of Comsat was estimated to have enough capacity to meet requirements until 1977), when we authorized the sixth trans-Atlantic cable last year. Thus, it is to be noted that the evidence of adequate capacity in satellites to meet the foreseeable demand was not in and of itself found to be sufficient reason for denying additional trans-Atlantic cable capacity.

40. In connection with this matter of adequacy of facilities, it is to be noted that there are considerable divergencies between the estimates made by applicants [10] and those made by our staff [11] as to the expected growth in demand over the next several years. We have already expressed our view that we may reasonably expect to see the demand for services and facilities in the Pacific Ocean Basin grow at a more rapid rate during the balance of this decade than has obtained in the past few years. However, it does appear to us that at least in the 1973–75 time frame, applicants estimates are, to say the least, on the high side. Nevertheless, the data show that whether one relies on the more conservative and in our opinion realistic view of our staff based on an extrapolation from most recent data or in the aforementioned estimates of applicants, one cannot justify a grant of the instant applications on a shortage of total facilities in the 1973–75 time frame.

41. On the other hand, it has been our consistent policy to rely on both cable and satellite facilities even where the latter are capable of meeting total circuit requirements in the numerical sense. Consistent with that policy the availability of cable capacity has not deterred a grant of satellite facilities. For example, the authorization of TAT–6 in the Atlantic with its 4000 circuits did not deter countries who are

[10] See attached Tables II and III for applicants' estimates.
[11] See attached Table V for our Staff estimate.

to be the joint owners of that cable as well as the 1800 circuit CANTAT–2 cable and who are also members of Intelsat from supporting the Intelsat IV–A satellite program to add many thousands of additional satellite circuits in the 1975–76 time frame to the almost 6000 cable circuits authorized. Clearly there are other considerations of overriding importance which we shall now address.

42. An important consideration in formulating any policy with respect to the optimum type or mixture of facilities is the fact that a communication path is only as reliable as its weakest link. Thus, a break anywhere in a cable or a failure at a cable station incapacitates the entire facility until it is repaired. In the case of satellite communication, service depends not only on the satellite but also on each of the earth stations through which the communication must pass. Accordingly, unless there is redundancy in satellite and earth station facilities, a failure in any one part of the link would break the communications path. In the Pacific area, at the present time, only Japan and Australia among foreign entities have dual earth station facilities. Because of the fact that communication points in the Pacific are separated by vast ocean expanses or, for the most part, do not have the benefit of terrestrial inter-connections for rerouting purposes even when they are contiguous, the failure of an earth station in points other than Japan or Australia would have a serious affect on communications. This is in contrast with the trans-Atlantic situation where there will soon be countries with dual antennas, and secondly, the terrestrial internal facilities in Europe provide for interconnection between earth stations allowing restoration of service in the event of an earth station failure. Yet, as noted above, it has been found that the service integrity and continuity in the Atlantic basin would be served by authorizing a sixth cable to assume needed diversity, redundancy and reliability. In the Pacific, as noted, there are only two early design, low capacity cables west of Hawaii with a combined capacity of some 222 voice-grade circuits. The need for additional cable facilities to insure continuity of service through redundancy and diversity would appear to be greater at this time in the Pacific Ocean Basin than in the Atlantic. This factor is somewhat accentuated by the fact that the Intelsat IV satellites have been experiencing receiver degradation which, although of a non-fatal nature, does create operational and lifetime uncertainties.

43. Aside from the foregoing, there are other considerations which must be taken into account in reaching a decision on the applications. For example, the Commission has been advised of the interest and support of the Department of Defense in the cables under consideration. That agency by letters dated November 11, 1971 and January 23, 1973, stated that it supported the applications before us on grounds of redundancy, diversity and "more optimum balance in the availability of both cable and satellite communication media".

44. The Commission has always recognized and taken into account the views of the foreign correspondents of United States carriers who operate the other ends of the circuits terminating in this country.[12]

[12] In our June 24, 1971 Statement of Policy we said that we would take "* * * careful account of the expressed views and concerns of the European administrations with respect to trans-Atlantic facilities required during this decade. 30 F.C.C., 2d 571, 572 (1971).

We remain firmly of the opinion that international communications must always be viewed as a cooperative venture in which each sovereign entity should, in the interests of comity and mutual respect, strive to find a course which accommodates the basic interests of its partners in telecommunications service. We have been made aware in this connection informally that the major foreign entities participating in the proposed cables fully support the instant applications and have many months ago taken the necessary steps in accordance with their respective domestic statutory requirements to authorize their telecommunication entities to participate in the joint project. In this connection we also note that by letter dated April 4, 1973, the Commission was officially advised by the Department of State ". . . of increasing concern on the part of other administrations in the Pacific area, especially in Australia and Japan, to the fact that a decision had not yet been reached on the applications."

45. Finally, we have taken account of the investments and estimated operating expenses associated with the proposed cables and it appears that the resulting revenue requirements will be commensurate with the benefits sought to be provided by such cables in terms of diversity and redundancy as well as by affording the greater flexibility in satisfying specialized user preferences for either cable or satellite circuits.[13] Moreover, authorization and installation of the proposed cables will be accompanied by significant rate reductions.

46. In this connection, AT&T is prepared to support its estimate of reduced revenue requirements per cable circuit as a result of a grant of its application by prompt affirmative action on charges to the public. Thus upon a grant of its proposals it will introduce a direct dial rate approximately 25% below current station rates to Hawaii and when the cable is in service will file further reductions which in total would save rate payers some $30 million in charges in 1975. Insofar as other trans-Pacific points are concerned, AT&T will, subject to agreement of its correspondents, introduce in stages reductions on charges to customers of over twenty percent.

47. In summary, the following considerations warrant that we find that the public convenience and necessity will be served by our authorization of the proposed (Phase I) cables:

(a) The growing importance of the Pacific Ocean Basin;

(b) The national interest in and importance of tying the State of Hawaii to the Mainland with modern and efficient cable and satellite facilities;

(c) The special situation resulting from the fact that Hawaii is an important Pacific Ocean traffic center;

(d) The economic, political and national security considerations which require modern high capacity, efficient and economic facilities;

(e) The concomitant importance of reliability and continuity of service which require both diversity and redundancy as well as adequate capacity;

[13] In this connection, it is to be noted that in its TAT–5 decision the Commission found, 13 F.C.C. 2d 235 at pp. 242, 243 (1968): 22. Finally, for the reasons set forth in paragraph 24, infra, we do not believe that any useful purpose would be served by going over relative costs or the revenue requirement data filed by the interested parties in response to the Commission's informal inquiry. In any event, our decision to grant these applications is based on the above broad spectrum of considerations.

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(f) The relatively low capacity as well as the age of cable facilities available in the Pacific Ocean;

(g) The fact that the costs related to the proposed cables are commensurate with the benefits to be derived therefrom; and

(h) The rate reductions which will be made available to the public upon authorization and installation of these facilities.

It is to be noted that the Department of State whose concurrence and assent are required before grant of the requested cable landing licenses can be made has by letters dated May 24, 1973 given the necessary assent and concurrence to the applications. Accordingly, we shall grant the referenced applications subject to the conditions hereinafter stated.

48. The Commission, in its Second Report and Order in the Domestic Satellite proceeding (Docket No. 16495) announced the policy that rates for communications services between Hawaii and the Mainland shall be integrated with the domestic communication rates structure. Specifically, domestic common carriers authorized to construct satellite systems which will include service to Hawaii, are required by this policy to submit for Commission approval their proposed rate revisions applicable to service between Hawaii and the Mainland. Without prejudice to future proposals under that policy, but in furtherance thereof, we expect that AT&T and HTC will implement the first part of their total rate proposal immediately and special permission IS HEREBY GRANTED to these carriers to file, effective on not more than 1 day notice to the public, tariffs setting forth rates no higher than those specified in Attachment B to the letter on the instant application filed March 29, 1973, on behalf of the Governor of Hawaii by Martin J. Gaynes. If these rates are not effective within 5 days after the release of this Memorandum Opinion and Order, then the authorization given herein pursuant to Section 214 of the Communications Act and the Cable Landing License shall become null and void without further action of this Commission.

49. Further, in connection with proposed rate adjustments for telephone service with the contiguous states, we will require AT&T and HTC to submit not less than 120 days prior to the date they expect to institute service over this cable the second series of reductions in rates specified in the aforementioned letter on behalf of the Governor of Hawaii together with detailed data designed to demonstrate that the specific rates will in fact result in the total reduction specified in that letter.

50. No specific time table is set forth with respect to AT&T's proposed reductions in telephone rates to Pacific points other than Hawaii. We therefore will require that AT&T shall beginning September 15, 1973, and monthly thereafter file a report of the progress of its negotiations during the month preceding the report in securing the estimated reductions. Furthermore, we will require AT&T to file tariffs implementing such reductions as they are negotiated on a point by point basis and special permission IS HEREBY GRANTED to file the 20% rate reduction as represented in their applications on not less than one day's notice. In addition, we shall require that AT&T submit,

at least 120 days prior to the date service over the cable is proposed to be instituted to points other than Hawaii, tariff schedules which will implement the aforementioned 20% reduction to all points to which they have not been implemented at an earlier date.

51. The carriers which are parties to the applications before us have not made specific proposals for rate adjustments for leased channel or record services either to Hawaii or foreign points. We fail to understand why they do not propose to give the public the benefit of the substantial economies they contend will result from this proposed cable. However, it is expected that the carriers consonant with the competitive environment in which they operate, will each undertake negotiations with their foreign correspondents looking toward adjustments in rates which will reflect the competitive economics of their operations in each of the services they provide both out of the contiguous states and Hawaii. We shall require, commencing September 15, 1973, monthly reports, as in the case of AT&T, on the progress made in such negotiations.

52. Insofar as service between Hawaii and other U.S. points (including the Mainland) is concerned, U.S. carriers operate both ends of the circuits and therefore require no negotiations with foreign entities to adjust rates. Moreover, the Commission's policies, as indicated above, in the Comsat proceeding contemplate that Hawaii will be integrated with the domestic rate schedules applicable to services on the Mainland. In furtherance of this policy, we therefore require that the carriers shall:

(a) Within 30 days of the release of this Memorandum Opinion and Order indicate rate adjustments for services, other than public telephone message service between Mainland and Hawaii, between Hawaii and other U.S. points in the Pacific to go into effect immediately or specify why such adjustments are not immediately feasible.

(b) At least 120 days prior to the institution of service over the new cable system submit tariff schedules to be effective when the cable opens which fully reflect all of the economies claimed by the carriers which will result from the cable under construction.

53. Finally with respect to charges for foreign telephone and record traffic which originates or terminates in Hawaii or in Guam, such charges should be revised to reflect the claimed economies of the new cable. Therefore, each carrier:

At least 120 days before it proposes to provide service to any foreign point other than the Mainland (see para. 48 & 49) via the proposed cable, shall:

(a) Submit proposed rates and charges for message telephone traffic between Hawaii and foreign points in the Pacific which are no higher than those filed by carriers providing for like communications services between the Mainland and such other points or file a detailed statement justifying on an actual cost of facilities basis the reasons for proposing higher rates and charges;

(b) Submit proposed rates and charges for all telephone and record services between Guam and foreign points in the Pacific which reflect the claimed economies of the new cable system, based on the actual cost of facilities;

(c) With respect to points other than Pacific points submit rates and charges which may differ from those filed by carriers providing like services between the Mainland and such points by an amount justified on an actual cost of facilities basis.

54. We note that applicants, in general, urge that we apply the same policies to the current applications and their proposals for Phase II in the Pacific area as we have already applied to the Atlantic area in our June 24, 1971 Statement of Policy and Guidelines. They therefore propose that the Commission adopt a policy of "reasonable parity" [13a] between cable and satellite facilities in the Pacific and advise that upon the installation of the cables which are the subjects of the instant applications future requirements would be met by implementing only cable circuits until reasonable parity in the number of circuits used with satellites would be achieved on a country by country basis and then such parity would be maintained by alternating between cables and satellites when adding additional circuits. Future growth in demand would be met by the installation of additional circuits in Phase II, i.e., a cable running directly from Japan to Hawaii and another running from Australia to Hawaii, so that reasonable parity between cable and satellite circuitry in use could be maintained at major Pacific points for the foreseeable future.

55. In our 1971 Policy Statement, we specifically stated: [14]

> 5. At the present time, we are ready to formulate our policy regarding future licensing of trans-Atlantic facilities for this decade. A policy as to other areas will be announced at later dates.

Thus, clearly the June 24, 1971 Policy Statement applies only to trans-Atlantic facilities. Furthermore, it is based on the factual context of that area which may be summarized as follows:

(a) It is the most important transoceanic area from the point of view of volume. As noted above, current (March 31, 1973) voice-grade circuits used to Europe, Africa and the Middle East totaled 2109 or considerably more than twice the 921 such circuits used at the same time to trans-Pacific points.

(b) The distances are considerably shorter. TAT–5, the same type of cable as proposed herein, had a total length of 3461 miles whereas the Mainland-Okinawa cable system totals 7000 miles in length.

(c) The cost considerations are entirely different. According to figures on file with the Commission the total investment in TAT–5 was $87,000,000 whereas total investment in the proposed Mainland-Okinawa cable is estimated to be $180,000,000. It is recognized that TAT–5 was extended via MAT–1 and that the carriers have interests in the Israel-France and Lebanon-France cables but the comparison here is over the main route. Furthermore the applicants indicated they expect to reach other Asiatic and Oceanic points via extensions from Okinawa. For example, we are advised that Japan is negotiating with respect to a cable to Hong Kong, and with respect to a cable to the Shanghai area. There are also reports of other cable and telecommunications projects connecting Japan with Korea, Malaysia, Indonesia and Thailand.

[13a] It appears that applicants have interpreted "reasonable parity" to mean a 50/50 ratio between cable and satellite.
[14] 30 FCC 2d 571, 572 (1971).

(d) A cable which lands on the European Continent has access to a highly developed inter-continental system to reach several hundred million people in a relatively compact and contiguous area whereas in the Pacific Ocean the populous areas are scattered and require extensions of the deep sea cable to reach them, i.e., 3650 miles from Hawaii to Guam; 3000 miles from Guam to Australia and 1468 miles from Guam to the Philippines.

(e) Trans-Atlantic facilities connect the United States with foreign points to which international rate patterns are applicable and service is supplied either by jointly owned cables and/or Intelsat facilities. However, in the Pacific area, Hawaii, a state of the Union, is the first landing point of the cable system. It accounts, at present, for some 462 voice-grade circuits or 50% of the total number used to serve all trans-Pacific points from the Mainland. Furthermore, under the policy enunciated in our December 22, 1972 Decision in our Domestic satellite proceeding, we specifically required that steps be taken toward integrating rates for service between Hawaii and the contiguous states with the rate pattern applicable to such contiguous states. Finally, unlike international points which have only cable and/or Intelsat facilities available, Hawaii will be served by the U.S. domestic satellite system(s).

(f) In the Atlantic area most projections indicate that the Intelsat IV primary satellites will be filled in the 1975–1977 time frame and that additional facilities would be needed at that point to meet projected demand. That situation does not obtain in the Pacific. Current capacity of the Intelsat IV, especially if supplemented by an operational spare would meet needs from a capacity standpoint for the foreseeable future.

56. Accordingly, we specifically reject the proposal of the applicants that we adopt in the Pacific Ocean Basin a policy of reasonable parity, as construed by the applicants to mean a 50–50 split between cable and satellite circuits on an individual point to point basis. Our concern here is to assure adequate diversity, redundancy and flexibility and the availability of sufficient capacity therefor. Moreover, the Commission believes that under prevailing circumstances reliance cannot be placed on a single technology be it cable or satellite. It appears to us that the proposed cables will provide these assurances for the foreseeable future or at least until reasonably near the end of the decade. Thus we do not approve directly or by implication Phase II proposals for additional Pacific cables, between Australia and/or Japan and Hawaii or between Hawaii and the Mainland. This is without prejudice to any applications for such direct cables filed toward the end of the decade or sooner if current conditions change substantially. It follows as a corollary that we should not encourage or countenance traffic handling procedures which will operate to fill the cable while keeping the Pacific satellites relatively unused. Accordingly, we also reject the proposal that upon opening of the cable the United States carriers will not lease any more satellite circuits until parity as discussed herein is reached between cable and satellite facilities over each route. (In this connection we note that when satellite service was instituted the carriers did not stop adding cable circuits until the satellite achieve parity.)

57. One of our goals is to maintain sufficient diversity and redundancy to assure continuity of service in case of catastrophic failures. We believe this goal can better be achieved in the Pacific by the maintenance of spare capacity in the cables by a more gradual rate of fill if there were to be an artificial halt to the lease of additional satellite circuits. We agree that an 85 to 90% satellite use vs a 10 to 15% cable use may represent an undesirable imbalance [15] but that is a far cry from maintaining a 50/50 ratio. We therefore expect the carriers to follow a policy of insuring adequate diversity in the routing of traffic while maintaining a reasonable number of spare circuits in cable and satellite facilities for the remainder of the decade. We do not believe that the public interest would be served if we went beyond the formulation of these general principles at this stage by presenting a specific formula or exact percentages. Instead we propose to rely upon the initiative of the United States carriers after consultation with their foreign correspondents and with Comsat to come forth at least 120 days prior to the time when the cable is scheduled to become operative with a mutually agreed plan for the implementation of circuits over the new facilities in accordance with the policy set forth herein. In furtherance of such a policy we would expect that there would not be any freezing of then current levels of satellite circuits but that rather the adequate diversity and redundancy would be ensured through the use of cables to meet part of the growing demand upon which the carriers have predicated their applications. We might point out that any proposals with respect to the maintenance of adequate diversity do not necessarily have to be the same for all points. Distance, cost, national security and other considerations can and should provide bases for different cable/satellite ratios for different routes. We shall retain jurisdiction to authorize the implementation of circuits to ensure that in the absence of agreement, the policy we are establishing is in fact carried out by the entities subject to our jurisdiction.

58. In addition to all the foregoing, we must bear in mind the unique position held by Hawaii in the scheme of traffic handling in the Pacific both from the point of new facilities to serve it and its integration with the domestic rate patterns. Clearly there is no point to laying cables west of Hawaii without having substantially equivalent cable facilities east of Hawaii so long as the California gateway is maintained. But as noted, Hawaii will, unlike other trans-Pacific points, be served by a domestic satellite system. We desire at this point to maintain our options on how service between the contiguous states and Hawaii can be provided most efficiently and economically. As indicated in our Domestic Satellite Decision we propose subject to the constraints imposed by law, to take the steps which are necessary to fully integrate Hawaii with the domestic communication network. Such action would necessarily have an impact on the manner in which traffic originating west of Hawaii, and destined to United States points east of Hawaii, may be handled in the future. It may

[15] Our comments here are not to be construed as applying to traffic between the contiguous states and Hawaii where several different satellite systems may be available and other considerations may dictate heavier reliance on satellite facilities.

also affect the particular facilities as well as ownership patterns we will authorize in the future for the domestic handling of international Trans-Pacific traffic east of Hawaii. We desire further to maintain our options as to whether Hawaii should be treated as a gateway to the United States, or whether in the future there should be, more than one gateway in the Pacific area. Moreover, we reserve the right to assess the situation at the time that a domestic satellite system becomes operational in servicing Hawaii-Mainland traffic requirements. For all these reasons any consideration of an additional cable (of the SG type) between Mainland-Hawaii or to the Phase II cables between Hawaii-Japan or Hawaii-Australia would be premature in the immediate future.

59. We are aware of the problems and difficulties which arose some time ago in connection with the desire of the Department of Defense to have the utmost flexibility in the use of the facilities it leased in the Pacific area from the various carriers. We believe it important that such future difficulties be obviated through the cooperation of the foreign correspondents of the United States carriers. This can be done if before the agreements are made final the United States carriers incorporate in such contracts and understandings with their foreign correspondents appropriate provisions which will insure that at the various points where the new trans-Pacific cable lands, and particularly Guam and Hawaii, the Department of Defense and other United States Government agencies will have the utmost flexibility in rearranging circuits, in combining or recombining traffic flows and will not as a consequence thereof be required to lease or pay for facilities which such agencies do not require for use from a capacity point of view. We expect, of course, that the United States carriers will extend the same courtesy to the agencies of the government of the foreign correspondents. To the extent that the implementation of such policy requires revision in current contractual understandings we will expect the United States carriers to initiate the necessary steps for such negotiations. In any event we are conditioning our grant herein upon a showing by the United States carriers that there are no contractual or other inhibitions which would adversely affect the above described flexibility required by the Department of Defense or other government agencies in discharging their obligations economically.

60. We note that in the application submitted to us there is a wide disparity in the assignment of circuits in the proposed cable between the voice and record carriers and current use by such entities in existing facilities. No good cause has been shown to justify these major differences. It would appear to us that at least initially assignments of and, therefore, investment in facilities by the United States carriers should reflect the current use situation. We will, therefore, require the United States carriers to present to us a definitive proposal for the division of ownership, investment and circuit use in each segment of the cable system authorized herein which reflects current use by each carrier with appropriate adjustment for clearly foreseeable changes. In general, therefore, the share of each carrier should, with justified changes, approximate current shares; i.e., if AT&T now uses 50% of a

particular segment in the current trans-Pacific system, we could expect that the definitive agreement we require would provide for a similar ownership of 50% of the half circuits in that segment or would explain why another percentage was agreed upon. Furthermore, in order to be in a position to accommodate future developments, particularly if there should be major deviations from current patterns, we hereby will require as we have with respect to the trans-Atlantic cables we have authorized, particularly TAT–6, that the carriers propose a pool from which they will be able to draw in accordance with need.[18] Such pools, in our opinion, consist of approximately one-third of the capacity, or some 280 circuits. This would leave 560 circuits to be allocated now, a number far more than sufficient to meet requirements over the next few years. In addition, the availability of a pool of approximately 280 circuits would allow adjustments between voice and record uses to particular points as traffic may require as well as among the record carriers. The investment in the pool circuits should be in accordance with the proportions agreed upon in the assigned circuits with provision for transfer, upon authorization, between and among carriers at depreciated original cost.

61. Another matter of concern here relates to the number of circuits in which the United States carriers propose to retain the whole ownership. It appears to us entirely reasonable and appropriate for the United States carriers to initially retain ownership of whole circuits in the proposed cables to serve points beyond Okinawa, provided that:

(a) there are adequate existing terrestrial facilities to reach such points;

(b) the countries which own the existing facilities have agreed to make available to the United States carrier and its foreign correspondents the connecting facilities in terms no less favorable than such transit facilities are made available to others;

(c) there is an agreement between the United States carrier and the foreign correspondent that such correspondent will purchase IRU rights in that number of ½ circuits which the United States carrier is tentatively assigning to such correspondent for the purpose of computing the whole circuits such carrier will retain.

It does not appear to us that United States carriers should undertake an investment of this type where there are no current facilities in being or under construction which would enable service to be provided to the points now indicated. An exception to the general rule could be made when it is shown that the country of ultimate destination has sufficient confidence in the proposal for future connection facilities to serve it to acquire by ownership or IRU as appropriate a one-half interest in the circuitry in the proposed cables necessary to provide the service. Absent such acquisition it would appear to us that the owning entity at each end of the cable should carry its half of the capacity either for use as demand grows or for resale by the foreign entity to the interested user when such foreign entity installs the connecting link of the

[18] See the decision on the TAT–6 application where a similar policy was applied. 35 FCC 2d 801 (1972).

facilities to points of ultimate destination. Our grant herein is conditioned upon an appropriate revision of existing contracts to implement this policy by limiting the investment on whole circuits. To put it simply we do not expect either the United States carriers or their foreign correspondents to subsidize each other by unilaterally carrying the investment in whole circuits either for future connections or because they are excessive spares.

62. In connection with the foregoing, we note that in some instances at least there appears to be a disparity between the ownership proposed in different segments of the cable. It would appear to us that in each instance assignment of facilities in each segment of the cable should be such as to insure that through service can be supplied, or if for some reason a temporary imbalance can be justified as between segments, then there should be contractual provisions for surrender of the needed capacity in the intermediate links to enable the through circuit to be completed from origin to point of destination. Specifically, if there is not sufficient capacity between Hawaii and the mainland to meet interstate needs and foreign needs then one must conclude either that the cable west of Hawaii has too much capacity, or that the cable east of Hawaii has too little or that some other thus far undetermined means of carrying beyond Hawaii traffic to other contiguous states will be used. In any event, we cannot make the needed public interest finding until AT&T demonstrates how it will handle the traffic east of Hawaii with present facilities. Our authorization herein will therefore be specifically conditioned on a showing, within one hundred and twenty days of the release of this Order that, in fact the allocations of capacity in each of the segments are such that they will provide through facilities, or that other acceptable means of assuring the needed diversity, redundancy and flexibility will be used, and that United States carriers will not be required to carry the burden of whole or partial investment in some segments because of the inability to establish complete through routes.

63. Finally, with respect to AT&T's acquisition of a 23% interest in the Commonwealth TASI–B system, it would appear that this proposal is the most economical method of providing additional circuitry needed to prevent a potential bottleneck in the Guam-Australia segment of the SEACOM cable. It would further appear that this proposal also affords an opportunity for AT&T to dispose of uneeded circuitry. Therefore, we shall herein authorize AT&T to acquire a 23% interest in the TASI system with the understanding that any provisions made regarding the future resale to the Commonwealth interests of any portion of AT&T's interest in such system will be consistent with this Order.

ORDER AND CERTIFICATE

1. IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the construction and operation of the Mainland-Okinawa cable system described in applications File Nos. P–C–8421, T–C–2436, T–C–2437, T–C–2441, as amended, and File Nos. P–C–8479, P–C–8526, T–C–2530, T–C–2532, T–C–2533;

2. IT IS ORDERED that the aforementioned applications to construct and operate, in conjunction with foreign entities, the Mainland-Okinawa cable system ARE GRANTED, to the extent set forth herein, and subject to the terms, conditions and limitations set forth herein, and are otherwise DENIED.

3. IT IS FURTHER ORDERED that, within 120 days of the date of this Order, the applicants shall jointly file applications setting forth the number of circuits to be assigned to each in accordance with the policies and principles set forth herein; provided however, that in the interim AT&T may proceed, pursuant to the order and certificate granted herein and the associated cable landing licenses, to construct and lay the cable subject to being reimbursed by the other applicants in accordance with the plan to be submitted for approval by the Commission.

4. IT IS FURTHER ORDERED that in the aforementioned applications the applicants shall make the showing required hereinabove that adequate facilities will be available east of Hawaii to handle traffic between the Mainland and points west of Hawaii as required in paragraph 62 above, and indicating compliance with the provisions of paragraph 61 above.

5. IT IS FURTHER ORDERED, that AT&T is authorized; (a) to acquire, on an indefeasible right of user basis, a 23% interest in the proposed (TASI–B) system between Vancouver, Canada and Sydney, Australia; and (b) use such facilities to provide up to the equivalent of ½ voice-grade circuits to be derived from 33 basic cable circuits between the Mainland and Australia.

6. IT IS FURTHER ORDERED, that AT&T submit an application for authority to sell its interest in unneeded circuitry in the Guam-Australia segment of the SEACOM cable at least 120 days before the proposed TASI system will be put into service.

7. IT IS FURTHER ORDERED, that the applicants herein comply with the conditions set forth in paragraphs 48 through 53 above with regard to rate reductions.

8. IT IS FURTHER ORDERED, that the applicants herein comply with the principles set forth in paragraphs 54 through 58 above with regard to the use of cable and satellite circuits.

9. IT IS FURTHER ORDERED, that the applicants herein may not implement service without further order of the Commission upon a showing that the applicants are in compliance with the terms and conditions set forth herein, and upon a further showing that the agreements among the applicants and their foreign correspondents are in accordance with the principles set forth herein regarding adequate diversity, and redundancy, and upon a further showing that there are no contractual or other inhibitions which would adversely affect the flexibility required by any government agency in discharging its responsibilities for communications economically.

10. IT IS FURTHER ORDERED, except as provided with respect to the TASI–B system authorized herein, that no increase in the number of usable voice-grade circuits beyond the initial 845, whether by carrier or other equipment shall be undertaken by any owner or op-

erator of the Mainland-Okinawa cable circuits, nor shall additional circuits be derived by the installation of TASI equipment, or otherwise, unless authorized by the Commission.

11. IT IS FURTHER ORDERED, that no applicant herein shall dispose of any interest in any circuits in the facilities they are herein authorized to acquire in any way without prior authorization of the Commission, *Provided however*, where one United States carrier proposes to dispose of interests in circuits in the subject facilities to another United States carrier fully subject to the Communications Act of 1934, the United States carrier, proposing to dispose of the circuits need only file a letter, to be associated with the acquiring carrier's application, showing that said disposition of circuits will not impair disposing carrier's ability to serve the public interest, convenience and necessity.

12. IT IS FURTHER ORDERED, that insofar as the applicants interest in the proposed cable system is concerned, the Commission retains jurisdiction to reassign circuits authorized to the applicants herein to implement any merger, consolidation or restructuring of overseas carriers or facilities which the Commission may authorize in the future pursuant to enabling legislation which may be enacted for such purposes.

13. IT IS FURTHER ORDERED, that jurisdiction is retained by the Commission to reallocate the applicants interests in circuits herein authorized as the public interest may require, with, where required, the concurrence of the foreign administrations or carriers concerned, and, further, jurisdiction is retained by the Commission over all matters relating to applicants' ownership management, maintenance and operation of this cable as authorized herein, to assure the most efficient use not only of this cable, but of all means of communication between the contiguous states and points in the Pacific Ocean Area.

14. IT IS FURTHER ORDERED, that subject to the provisions of paragraphs 61 and 62 herein the applicants herein may not, without further authorization of the Commission granted upon a fully documented application, expend or invest any sums in the cable system authorized herein in excess of those specified in their applications.

15. IT IS FURTHER ORDERED, that the applicants herein shall submit monthly reports showing by individual country the use of the circuits between the contiguous states on the one hand, and Hawaii, as well as each foreign point served via the cable system, as well as between Hawaii and each foreign point, on the other hand, in the cable system herein authorized beginning on the 15th day of the 2nd month following the opening of the cable for the handling of commercial traffic. (This requirement can be satisfied by the inclusion of appropriate information in the carriers Monthly Circuit Reports to the Commission).

FEDERAL COMMUNICATIONS COMMISSION.
BEN F. WAPLE, *Secretary.*

TABLE I.—*Percentage participation and costs (by segment)*

Carrier	Proposed No. of half circuits	Percent of share	Capital costs (in millions)
Mainland-Hawaii No. 3:			
AT&T	551	32.61	19.7
AT&T-others	111	6.57	3.9
	662	39.18	23.0
HTC	300	17.75	10.4
KDD	132	7.81	4.6
Commonwealth	106	6.27	3.7
ITT-RCA-WUI	490	28.99	17.0
	1,690	100.00	58.7
Hawaii-Guam section:			
AT&T	402	23.787	20.15
AT&T-others	221	13.077	11.08
	623	36.864	31.23
ITT	218	12.900	10.93
RCA	222	13.136	11.13
WUI	210	12.426	10.52
HTC	43	2.544	2.15
KDD	262	15.503	13.13
Commonwealth	112	6.627	5.61
	1,690	100.000	84.70
Guam-Okinawa section:			
AT&T	410	24.261	8.95
AT&T-others	247	14.615	5.39
	657	38.876	14.34
ITT	174	10.296	3.80
RCA	215	12.722	4.69
WUI	182	10.769	3.97
HTC	14	.828	.31
KDD	361	21.361	7.88
Commonwealth	87	5.148	1.91
	1,690	100.000	36.90

TABLE II.—*Circuit forecast (AT&T circuits to points in the Pacific)*

	1971	1972	1973	1974	1975	1976	1977	1980
Hawaii	287	362	455	561	693	848	1,049	1,765
P. L.	49	56	62	68	75	83	91	121
Sub Total—Hawaii	336	418	517	629	768	931	1,140	1,886
Australia	39	51	64	88	114	138	177	315
New Zealand	10	12	14	16	22	26	32	58
Fiji	0	0	0	4	6	7	10	22
Hong Kong	29	39	50	61	75	92	112	205
Singapore	8	11	13	16	22	27	33	60
Malaysia	2	2	3	4	5	7	9	18
Japan	99	125	154	217	261	315	378	657
P. L.	1	1	1	1	1	1	1	1
Guam	12	17	19	25	30	36	44	77
P. L.	1	1	1	1	1	1	1	1
Indonesia	0	2	4	6	8	12	16	42
Kymer Republic	0	0	0	1	1	1	1	3
Korea	22	28	35	44	55	74	90	160
Philippines	36	44	52	65	78	93	125	221
Samoa	2	3	3	4	5	6	7	13
Thailand	7	10	11	13	16	20	24	42
Vietnam	28	28	30	33	39	46	57	99
Taiwan	14	18	22	28	31	45	56	102
Sub Total—Beyond Hawaii	310	392	476	627	773	947	1,173	2,096
China	1	2	3	4	6	12	21	118
Total	647	812	996	1,260	1,547	1,890	2,334	4,100

TABLE III.—*Circuit forecast (A T& T Circuits to points in the Pacific beyond Hawaii)*

	Existing	1973	1974	1975	1976	1977	1978	1979	1980
Australia	40	64	88	114	138	177	211	257	315
New Zealand	10	14	16	22	26	32	39	47	58
China (Mainland)	3	3	4	6	12	21	42	76	118
Fiji	0	0	4	6	7	10	13	16	22
Hong Kong	28	50	61	75	92	112	138	168	205
Singapore	8	13	16	22	27	33	40	49	60
Malaysia	3	3	4	5	7	9	11	14	18
Japan[1]	107	154	190	261	315	378	457	547	657
Private line	1	1	1	1	1	1	1	1	1
Guam	13	19	21	30	36	44	53	64	77
Private line	1	1	1	1	1	1	1	1	1
Kymer Republic	0	0	1	1	1	1	2	2	3
Korea	22	35	44	55	74	90	109	131	160
Philippines	38	52	61	78	93	125	152	184	221
Samoa	2	3	4	5	6	7	8	11	13
Thailand	8	11	13	16	20	24	29	34	42
Vietnam	25	30	33	39	46	57	68	81	99
Taiwan	16	22	28	34	45	56	68	82	102
Total	325	475	582	771	947	1,178	1,442	1,765	2,172

[1] Includes Okinawa.

TABLE IV.—*Pacific average year circuit estimates (U.S. Mainland, Hawaii, Asia, and Oceania, 1974–81)*

	Cable/satellite parity		Total	Satellite only[2]
	Cable[1]	Satellite[2]		
1974	347	1,299	1,646	1,646
1975	623	1,433	2,056	2,056
1976	853	1,699	2,552	2,552
1977	1,096	2,056	3,152	3,152
1978	1,398	2,479	3,877	3,877
1979	1,755	3,001	4,756	4,756
1980	2,189	3,631	5,820	5,820
1981	2,712	4,394	7,106	7,106
Total	10,973	19,992	30,965	30,965

[1] Does not include existing cable circuits.
[2] Includes foreign-to-foreign circuits.

TABLE V-A.—*Commission staff forecast of total demand for telephony, 1972–80 (from the U.S. Mainland)*

[Direct voice-grade circuits; private lines shown in brackets]

Destination point	Actual 1972	1973	1974	1975	1976	1977	1978	1979	1980
Hawaii	364[53]	440[52]	498[52]	586[52]	666[52]	758[52]	843[52]	938[52]	1,044[52]
Cambodia					1	1	1	2	2
Ceylon				1	1	1	2	2	2
Taiwan	18	22	27	33	40	48	58	70	85
China, People's Republic	3	4	5	6	6	6	7	8	9
Hong Kong	30	40	53	70	88	110	132	158	190
Japan [1]	108[1]	140[1]	162[1]	189[1]	220[1]	254[1]	296[1]	343[1]	400[1]
Korea (South)	28	33	39	47	56	64	74	85	97
Malaysia	3	3	3	4	5	5	6	6	7
Singapore	10	12	14	16	18	20	22	24	26
Thailand	9	9	10	12	14	16	19	22	25
Vietnam (South)	21	13	13	13	13	13	13	13	13
Asia	230[1]	276[1]	326[1]	391[1]	462[1]	538[1]	630[1]	733[1]	856[1]
Australia	40	48	58	70	84	101	116	133	153
Fiji Island			2	3	4	4	5	6	7
French Polynesia	1	1	1	2	2	2	3	3	3
Guam	16[1]	18[1]	20[1]	22[1]	24[1]	27[1]	30[1]	33[1]	36[1]
Indonesia			1	2	3	4	5	6	7
New Zealand	11	12	14	16	18	20	22	24	27
Philippines	38	42	46	53	61	70	77	85	94
Samoa, American	2	3	4	5	6	7	8	11	13
U.S. Trust Territory				1	1	1	2	2	2
Oceania	108[1]	124[1]	146[1]	175[1]	203[1]	236[1]	268[1]	303[1]	342[1]
Total Pacific	702[55]	840[54]	970[54]	1,152[54]	1,331[54]	1,532[54]	1,741[54]	1,974[54]	2,242[54]

[1] Including Okinawa.

TABLE V-B.—*Commission staff forecast of total demand for record carrier services, 1972-80 (From the U.S. Mainland)*

[Direct voice-grade circuit equivalents]

Destination point	Actual 1972	1973	1974	1975	1976	1977	1978	1979	1980
Hawaii	75	87	99	117	135	157	177	199	224
Ceylon				1	1	1	1	1	1
Taiwan	3	4	5	6	7	8	9	10	12
China, Peoples Republic	2	3	4	5	6	7	8	9	10
Hong Kong	4	4	5	6	7	8	9	10	12
Japan [1]	33	40	48	58	73	84	96	110	126
Korea (South)	2	3	4	5	6	7	8	9	10
Malaysia				1	1	1	1	2	2
Singapore		1	2	3	4	5	6	7	8
Thailand	2	2	2	3	3	3	4	4	5
Vietnam (South)		1	2	2	3	3	4	4	5
Asia	48	61	74	94	116	132	152	172	199
Australia	20¼	23¼	26½	30	34	38	43	48	54
Fiji Islands		1	1	1	1	1	1	2	2
French Polynesia	1	1	1	1	2	2	2	2	2
Guam	10	11	12	13	14	15	16	18	20
Indonesia	1	1	2	3	4	5	6	7	8
New Zealand	1¼	2¼	3½	4	5	6	7	8	9
Philippines	10½	12½	15	18	21	24	27	30	33
Samoa, American				1	1	1	1	1	1
U.S. Trust Territory				1	1	1	1	1	1
Oceania	44	52	61	72	83	93	104	117	130
Total Pacific	165	197	232	279	329	377	427	482	545

[1] Including Okinawa.

F.C.C. 73–1094

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of THE BUNKER-RAMO CORP., OAK BROOK, ILL., COMPLAINANT *v.* THE WESTERN UNION TELEGRAPH CO., NEW YORK, N.Y., DEFENDANT	Docket No. 19206

ORDER

(Adopted October 25, 1973; Released October 29, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER REID CONCURRING IN THE RESULT.

1. The Commission has before it for consideration: (a) a Memorandum Opinion and Order of the Review Board, FCC 72R–385, 38 FCC 2d 860, released December 20, 1972; (b) an application for review of (a), above, filed December 29, 1972, by Western Union Telegraph Company (W.U.); (c) a motion for acceptance of application for review in excess of ten pages, filed December 29, 1972, by W.U.; (d) an opposition to (b), above, filed January 11, 1973, by Bunker-Ramo Corporation (B–R); (e) an opposition to (b), above, filed January 17, 1973, by the Chief, Common Carrier Bureau; (f) a correction to (b), above, filed January 18, 1973, by W.U.; (g) a reply to (d), above, filed January 18, 1973, by W.U.; (h) a letter dated and filed January 23, 1973, by B–R; and (i) a reply to (e), above, filed January 26, 1973, by W.U.

2. IT IS ORDERED, That the motion for acceptance of application for review in excess of ten pages, filed December 29, 1972, by Western Union Telegraph Company, IS GRANTED, and the above-described application for review IS ACCEPTED.

3. IT IS FURTHER ORDERED, That the application for review, filed December 29, 1972, by Western Union Telegraph Company, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1114

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of:
CENTRAL ALABAMA BROADCASTERS, INC.
(WSLA (TV)), SELMA, ALA.
Application For License

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 30, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. We have before us for consideration: (a) the captioned application; (b) the request of Central Alabama Broadcasters, Inc. (Central), for program test authority (PTA) for television broadcast station WSLA, channel 8, Selma, Alabama; (c) an informal objection from WCOV, Inc. (WCOV-TV), licensee of station WCOV-TV, channel 20, Montgomery, Alabama, opposing a grant of PTA and a grant of the license application; and (d) an opposition, filed by Central.

2. The following brief summary of our prior action with respect to station WSLA (TV) would be of value to an understanding of the present proceeding. On January 6, 1971, we granted an application (BAPCT-470) to assign the construction permit for station WSLA (TV) from Selma Television Incorporated to Central. On the same day, the Chief of the Broadcast Bureau, acting pursuant to delegated authority, granted an application (BPCT-4376) for a construction permit to make changes in the authorized facilities of station WSLA (TV)[1]. Subsequently, in our decision in *Selma Television Incorporated*, 29 FCC 2d 522, released May 19, 1971, we denied two petitions for reconsideration of the grant of the modification application. The petitions, which were filed by WCOV-TV and Montgomery Independent Telecasters, Inc., licensee of station WKAB-TV, channel 32, Montgomery, Alabama, alleged, among other things, that the operation of VHF station WSLA (TV) with improved facilities would have an adverse impact on UHF broadcasting in Montgomery. In denying the petitions for reconsideration, we found there would be no significant economic impact on either of the Montgomery UHF stations. On the other hand, we concluded that substantial public interest benefits would result from the activation of a local outlet in Selma. On June 22, 1972, our decision was affirmed by the United States Court of Appeals for the District of Columbia, *WCOV, Inc.* v. *Federal Communications*

[1] The modification application requested, *inter alia*, an increase in effective radiated power from 2.51 kW to 25.1 kW. No changes in antenna height above average terrain or in transmitter location were proposed.

Commission, Case No. 71, 1472, 464 F. 2d 812, 24 RR 2d 2096. Thereafter, on July 24, 1973, WCOV–TV filed a petition for reconsideration of the grant of the assignment and modification applications[2]. WCOV–TV asserts that its present reconsideration request was prompted by the fact that while Central had stated in its prior assignment application that it anticipated an ABC network affiliation, it had contracted, on January 20, 1973, to become a CBS network affiliate. WCOV–TV contends that Central's change in network affiliation from ABC to CBS raises a question as to whether Central misrepresented to the Commission its plans for a network affiliation. Moreover, WCOV–TV, a CBS network affiliate, states that the change in station WSLA(TV)'s network affiliation completely realigns the equities with respect to the UHF impact issue which had been requested by WCOV–TV in its prior petition for reconsideration. Specifically, WCOV–TV asserts that the network overlap (CBS) between its station and station WSLA(TV) will be substantially greater than the network overlap (ABC) which exists between station WKAB–TV, and station WSLA(TV) at the time of the Commission's prior consideration of the UHF impact issue. Central has opposed WCOV–TV's petition for reconsideration.

3. On October 10, 1973, Central filed the captioned license application and a request for PTA for station WSLA(TV). In its opposition, filed October 11, 1973, WCOV–TV asserts that action on Central's PTA request should be deferred until the Commission acts on WCOV–TV's pending petition for reconsideration and motion for stay. We believe that it is significant to point out that there has been no change in the operating facilities authorized to station WSLA(TV) since the Commission and the Court acted on WCOV–TV's prior petition for reconsideration. Furthermore, the only allegation of injury alleged by WCOV–TV arises from Central's switch in its network affiliation. However, we find that the change in network affiliation does not constitute a sufficient basis for WCOV–TV's contention that it or the public will suffer irreparable injury. While WCOV–TV states that it will suffer financial loss, it has submitted no factual data to support its allegation. Moreover, we note that since our 1971 decision denying WCOV–TV's petition for reconsideration, WCOV–TV has experienced an improvement in its operating condition.

4. On the other hand, there is a strong likelihood that Central will suffer irreparable injury if it is not permitted to commence operation at this time. Central has completed construction of station WSLA (TV) in accordance with the terms of its construction permit; it has hired a staff and is ready to operate. Therefore, our deferral of action on Central's PTA request would impose an undue financial burden on Central which could jeopardize the public interest benefits to be derived from the institution of the first local television service to Selma.

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[2] WCOV–TV also filed a motion for stay of the effective date of the grant of the applications. Both of these pleadings were untimely filed under the Commission's rules and under section 405 of the Communications Act of 1934, as amended, and could have been summarily dismissed. However, since the petitioner raised matters which had occurred since grant of the construction permit which could be raised under section 319 of the Act against the license application, action was withheld pending filing of the license application.

In view of the above, WCOV–TV's request for deferral of action will be denied. However, we will consider the merits of WCOV–TV's pending petition for reconsideration when we act on station WSLA(TV)'s license application.

5. Accordingly, IT IS ORDERED, That the informal objection filed by WCOV–TV IS DENIED to the extent indicated herein and the request for program test authority, for station WSLA(TV), Selma, Alabama, IS GRANTED subject to whatever action the Commission may deem appropriate with respect to the above-captioned license application.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1135

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CENTRAL CABLEVISION, INC., PURCELL, OKLA. For Certificate of Compliance	CAC-2253 OK091

MEMORANDUM OPINION AND ORDER

(Adopted October 31, 1973; Released November 5, 1973)

BY THE COMMISSION:

1. On March 21, 1973, Central Cablevision, Inc., filed an application for a certificate of compliance to operate a new cable television system at Purcell, Oklahoma (CAC-2253).[1] The proposed system would operate with 20-channel capacity in the Oklahoma City, Oklahoma, television market (#39), and would offer the following television signals:

KBMA-TV (Ind., Channel 41), Kansas City, Missouri
WKY-TV (NBC, Channel 4), Oklahoma City, Oklahoma
KOCO-TV (ABC, Channel 5), Oklahoma City, Oklahoma
KWTV (CBS, Channel 9), Oklahoma City, Oklahoma
KETA (Educ., Channel 13), Oklahoma City, Oklahoma
KOKH (Educ., Channel 25), Oklahoma City, Oklahoma
KTVT (Ind., Channel 11), Fort Worth, Texas
KDTV (Ind., Channel 39), Dallas, Texas

Applicant's proposed signal carriage and proposed access program are consistent with Sections 76.61 and 76.251 of the Commission's Rules.

2. Central's franchise was not granted until January 16, 1973. Accordingly, full compliance with the standards of Section 76.31 of the Rules is required. Although otherwise fully consistent with these standards, the franchise is for a term of 25 years. This is inconsistent with Section 76.31(a)(3), which provides that "The initial franchise period shall not exceed fifteen (15) years . . ." Accordingly, we will deny the present proposal without prejudice to the reconsideration of our action herein in connection with the submission of an amended franchise.[2] See *Leacom, Inc.*, FCC 73-292, 40 FCC 2d 129, *reconsideration granted*, FCC 73-412, 40 FCC 2d 693.

[1] The community of Purcell, Oklahoma has a population of 4,076.

[2] We also note that Central has failed to comply with the requirement of Section 76.13(a) of the Rules that certain parts of an application be served on the superintendent of schools in the community of the system. This matter should be resolved prior to further Commission consideration of Central's application.

In view of the foregoing, the Commission finds that a grant of the subject application would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That Central Cablevision, Inc.'s application for certificate of compliance (CAC–2253) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1104

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of COMMUNITY TELECASTERS OF CLEVELAND, INC. (ASSIGNOR) and ZINGALE BROADCASTING CO. (ASSIGNEE) For Assignment of Construction Permit for WCTF(TV), Ch. 19, Cleveland, Ohio	File No. BAPCT-505

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 31, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT. COMMISSIONER JOHNSON DISSENTING. COMMISSIONERS H. REX LEE, REID, AND HOOKS CONCURRING IN THE RESULT.

1. The Commission has before it for consideration the above captioned assignment application for WCTF(TV), Ch. 19, Cleveland, Ohio, a petition to deny filed by WUAB, Inc. and responsive pleadings. Also to be considered is the total allowable consideration, since WCTF is an unbuilt station and therefore this transaction is subject to the provisions of Section 1.597(e)(2) of our Rules.

2. In support of its Petition to Deny, Petitioner alleges that: (1) due to Mr. Zingale's (100% owner of the proposed assignee) minority interest in Cleveland stations WIXY(AM) and WDOK(FM), his acquisition of WCTF(TV) would contravene our multiple ownership rules (Section 73.636); and (2) due to Mr. Zingales ownership in three Cleveland Professional Sports teams and his family and business relationship with Nick Mileti, the principal behind these teams, the acquisition of WCTF would cause an undue concentration of control of broadcast and sports interests in the Cleveland area contrary to the public interest. Before turning to these substantive allegations we must first resolve standing objections raised by the applicant in its Opposition pleading.

3. The petitioner is licensee of WUAB-TV, Ch. 43, Lorain, Ohio, which places a principal city grade signal over Cleveland and is authorized to identify itself with Cleveland as well as Lorain. It alleges nothing further to support its claim that it has standing as a party in interest to file a petition to deny. The applicant argues that this bare allegation is insufficient to confer standing in assignment and transfer cases. We agree. It is well settled in assignment and transfer cases that the bare allegation of competition for revenues in the

same market is insufficient to confer standing on a complainant. *Rockford Broadcasters, Inc.* 1 RR 2d 405 (1963). We will therefore consider petitioner's substantive allegations as informal objections under Sec. 1.587 of our Rules.

4. Petitioner as noted above, first alleges that the acquisition by Zingale Broadcasting Co. of WCTF(TV) would contravene Section 73.636 of our Rules which prohibits the holding of interests in radio and television stations in the same market. The basis for this allegation is that assignee's principal stockholder, Joseph Zingale, has a present 2.36% interest in Globetrotter Communications Inc., licensee of WIXY and WDOK(FM), Cleveland.[1]

5. Initially it must be emphasized that WCTF(TV) is a UHF television permittee and therefore as set forth in note 8 to Section 73.636, the retention of an ownership interest in radio stations in the same market does not pose an absolute bar to this acquisition. Rather, we have determined that the acquisition of a UHF station under such circumstances would be considered on an ad hoc basis.

6. In earlier cases we have permitted the acquisition of UHF and radio combinations in the same market principally on the ground that it did not appear that the UHF station could survive without the added revenue base provided by the radio station. See for example *Central Broadcasting Co., Inc.* 28 FCC 2d 229 (1971). Such precedent would clearly not be applicable to the present situation since Mr. Zingale retains only a very minor interest in the radio stations. However, in adopting the new multiple ownership rules our objectives were twofold: 1) Fostering maximum competition in broadcasting; and 2) promoting diversification of programming sources and viewpoints. (*First Report and Order in Docket 18110* 22 FCC 2d 306, 307 (1970)). On reconsideration of that Report and Order we restated our policy of fostering UHF development and indicated that upon a proper public interest showing the acquisition of UHF television and radio combinations in the same market would be permitted. 28 FCC 2d 662, 674, (1971).

7. Here, Channel 19 in Cleveland has been available for construction since 1952. The first permit for this channel was granted in 1954 and the present permittee has held it since 1968. Yet operation on this channel, due to the economics of the market, has never been commenced. Mr. Zingale is an experienced local broadcaster with sufficient resources to place WCTF(TV) on the air. Thus, a grant of this application will not only foster the development of UHF but will in addition bring a new local programming voice to the Cleveland market. Under these circumstances and considering the past difficulties in establishing this station, we do not believe the retention by Mr. Zingale of a small minority interest in WIXY and WDOK(FM) overrides the obvious public interest benefits to be achieved by a grant of this application. Consequently, these allegations fail to raise a substantial or material question of fact.

[1] Mr. Zingale was a principal stockholder of the licensee of these stations prior to their transfer to Globetrotter in October 1971. Immediately following the sale to Globetrotter, Mr. Zingale, in addition to retaining the 23.6% interest, was also employed as a consultant. The position as consultant has now been terminated.

8. Another issue raised by the petitioner is Mr. Zingale's involvement with Norman Wain, who is manager of WIXY and WDOK (FM) and also has a 2.36% interest in their licensee. Mr. Zingale and Mr. Wain are ⅓ partners in the licensee of WIXZ, McKeesport, Pa. The petitioner argues that this business relationship elsewhere precludes effective arms length competition in Cleveland in violation of the Commission's Macon doctrine (*Macon Television Co.*, 8 RR 703 (1952)). Since Mr. Zingale has a direct interest in WIXY and WDOK (FM) and we have found that acquiring WCTF does not violate our multiple ownership rules despite this direct interest, *a fortiorari* the indirect interest through his relationship with Mr. Wain does not present a substantial or material question of fact.

9. Finally Petitioner argues that because of Mr. Zingale's small minority interests in three Cleveland professional sports team [2] which are controlled by his Cousin Nick Mileti who also controls an AM and FM station in Cleveland, a grant of the subject application would cause a concentration of power in sports and broadcasting with possibilities of abuse in the areas of broadcast rights to sports events and the sale of broadcast advertising to businesses which might be interested in concessions, billboards and team personalities.

10. The bare recitation of the existence of the family and business relationships beween Mr. Zingale and Mr. Mileti does not raise a substantial or material question of fact which would preclude our making an affirmative public interest finding. Petitioner has neither alleged nor attempted to demonstrate that Mr. Zingale and Mr. Mileti have used their business interests in the past in an anticompetative manner. Consequently, Petitioner's claim of potential for abuse under these circumstances rests on nothing more than speculation and surmise which are insufficient to raise a substantial or material question of fact. *John Hay Whitney* 28 FCC 2d 736, 745–51; *Time Life Broadcast, Inc.* 33 FCC 2d 1099, 1128. Moreover, while Mr. Zingale has acknowledged his intention to compete with other licensees for the broadcast rights to these professional sports events, implicit in this response is the recognition that he cannot use his combined business interests to the competative disadvantage of other broadcast licensees.

11. Under the provisions of Section 1.597(e)(2) of our rules, consideration to the seller of an unbuilt station cannot exceed "the aggregate amount clearly shown to have been legitimately and prudently expended and to be expended, by the seller solely for preparing, filing, and advocating the grant of the construction permit for the station, and for other steps reasonably necessary toward placing the station in operation". The contract of sale for WCTF provides that the consideration shall be the amount established by the seller to the satisfaction of the Commission to have been its out of pocket expenses not to exceed $250,000. The application contains a list of out of pocket expenses totalling $212,405.34. By later amendment, the assignor ac-

[2] Mr. Zingale is a director and holds a 2/10 of one percent interest in the Cleveland Cavaliers basketball team; is a director and 2.1% stockholder of the Cleveland Indians baseball team which is being reorganized into a limited partnership with Zingale as a less than 2% limited partner; and a 4.9% limited partner in the Cleveland Crusaders Hockey team.

knowledged that two items, totalling $30,849.97 were not properly included in this total. In addition, several other items, totalling $579.31 were not properly included. They are subscriptions for Broadcasting Magazine and Broadcasting Yearbook ($55), a trip to the National Association of Television Executives ($393.47) and a trip to the NAB Convention in Chicago ($130.84). None of these items relates to any specific activities performed in connection with the prosecution of the assignor's application for construction permit or placing the station in operation. Therefore, none is reimbursable. *TVUE Associates, Inc.*, 5 FCC 2d 421 (Rev. Bd. 1966). Accordingly, the maximum allowable consideration for this assignment is $180,976.06.

12. In light of the above, IT IS ORDERED that the Petition to Deny filed by WUAB, Inc. IS DISMISSED, and the application for assignment of construction permit for WCTF(TV) from Community Telecasters of Cleveland, Inc. to Zingale Broadcasting Company IS GRANTED for a consideration not to exceed $180,976.06.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73–1096

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re the matter of
CONSTANTS FOR DIRECTIONAL ANTENNA COMPUTER PROGRAMS

The Commission, on October 26, 1973, issued the following PUBLIC NOTICE:

CONSTANTS FOR DIRECTIONAL ANTENNA COMPUTER PROGRAMS

Notice is hereby given that the Commission is now using the following constants in its computer programs for calculating radiation, RMS, etc., for standard broadcast directional antennas:

C1 152.15158 mV/m for 1 kW
C2 37.256479 mV/m for 1 ampere

The calculation of the performance of directional antennas in the standard broadcast band is usually performed by computer. Until recently, small differences in the calculations by different computer programs were usually negligible. But now, with an existing rule requirement that a one ohm loss resistance normally be assumed for each element (§ 73.150(b)(1)(i)), small variations in programs may yield significant differences in the computed results. This suggests the desirability of standardizing the value of the constants used in all computer programs.

Attached hereto, is a derivation of these two important constants used in the FCC's standard broadcast radiation computer programs. This derivation is based upon the latest determination of the speed of light by the National Bureau of Standards and is accurate to about one meter per second. The new figure for the speed of light does not change the constants appreciably, but the Commission is now specifying these constants to eight significant figures, and for the sake of uniformity suggests that computer programs used for preparing applications to be considered by the Commission use these same constants.

Commissioner Robert E. Lee absent.

Attachment

DERIVATION OF CONSTANTS USED IN COMPUTER PROGRAMS FOR STANDARD BROADCAST DIRECTIONAL ANTENNA CALCULATIONS

c=Velocity of Light in a Vacuum, 2.99792456×10^8 Meters/Second [1]
Uo=Permeability of free space, $4\ Pi \times 10^{-7}$ Henries/Meter [2]
r=Distance, 1 mile (1609.344 Meters)
Pi=3.141592654

[1] Most recent figure from the National Bureau of Standards for the velocity of light.
[2] By definition.

Pr=Radiated power in kilowatts
G=Antenna Height
Rc=Resistivity of free space in ohms. Rc=(Uo) (c)=376.73031 ohms
E=Field strength in millivolts per meter
C1=The constant that relates the inverse distance field strength at one mile in millivolts per meter to the square root of the power in kilowatts into a standard hemispherical radiator. (A standard hemispherical radiator is one that radiates power uniformly in all directions over a hemisphere)

$$E=\left[\frac{2(Rc)(10^3\,Pr)}{4(Pi)\,(r^2)}\right]^{1/2}\times 10^3 \text{ millivolts per meter}$$

$$E=(C1)\times(Pr)^{1/2}$$

$$C1=\left[\frac{2(Rc)(10^3)}{4(Pi)\,(r^2)}\right]^{1/2}\times 10^3$$

C1=152.15158 millivolts per meter for 1 kW (to 8 significant figures)
C2=The constant that relates the RMS inverse distance field strength at one mile in the horizontal plane in millivolts per meter to the loop current in amperes in a vertical radiator of height G.

$$E=\frac{(Rc)\times 10^3}{2(Pi)\,(r)}\,I(1-\text{Cos } G)$$

$$E=(C2)\,I(1-\text{Cos } G)$$

C2=37.256479 millivolts per meter for 1 ampere (to 8 significant figures)

F.C.C. 73-1150

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of COSMOPOLITAN BROADCASTING CORP., NEWARK, N.J. For Renewal of Main, Auxiliary, and SCA License for WHBI(FM)	Docket No. 19657 File No. BRH-1359, BRSCA-746

ORDER

(Adopted October 31, 1973; Released November 2, 1973)

BY THE COMMISSION:

1. The Commission has before it for consideration: a petition filed by Cosmopolitan Broadcasting Corporation on August 3, 1973, for review of a Review Board Memorandum Opinion and Order, FCC 73R-273, released July 27, 1973; and an opposition to the petition for review filed August 13, 1973, by the Broadcast Bureau.

2. IT IS ORDERED, in accordance with Section 1.115(g) of the Commission's Rules that the petition for review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1095

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 0.351—DELEGATION OF AUTHORITY TO THE CHIEF ADMINISTRATIVE LAW JUDGE

ORDER

(Adopted October 25, 1973; Released October 29, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER REID CONCURRING IN THE RESULT.

1. Under § 1.274(c) of the Rules, if the officer presiding at a hearing becomes unavailable to the Commission, a new hearing can be ordered or, in the alternative, the hearing can continue. In either event, a new presiding officer must be designated. The procedural determination and the designation of a presiding officer are functions which can appropriately and efficiently be performed by the Chief Administrative Law Judge. This being the case, we are amending the Rules to reflect such authority.

2. Authority for this amendment is contained in Sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(d) and 303(r). Because this amendment relates to internal Commission organization and procedure, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

3. In view of the foregoing, Section 0.351 of the Rules is amended as set forth in the Appendix hereto effective November 6, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
DIOCESAN UNION OF HOLY NAME SOCIETIES OF ROCKVILLE CENTRE AND LONG ISLAND COALITION FOR LIFE
Concerning Fairness Complaint re Station WCBS–TV, New York, N.Y.

OCTOBER 31, 1973.

On October 11, 1973, the Commission denied the application by the Diocesan Union of Holy Name Societies of Rockville Centre and the Long Island Coalition for Life for review of a June 12, 1973, ruling by the Broadcast Bureau denying Fairness Doctrine and personal attack complaints against WCBS–TV, New York, N.Y. The complaints were about a two-part episode of "Maude" aired by WCBS–TV on November 14 and 21, 1972, which portrayed Maude's discovery that she was pregnant and her decision to have an abortion.

Commissioner Johnson dissented to the Commission's action and has now issued the attached statement.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The Commission today issued a two-sentence order summarily denying Complainant's application for review of a fairness doctrine complaint involving the segments of CBS' program "Maude" dealing with the subject of abortion. In doing so, it conclusively precludes any Commission consideration of the substantive merits of the complaint.

The majority bases its decision on a contrived procedural rule which has no foundation in law or reason but which threatens to effectively emasculate the fairness doctrine. Because the scope of my dissent is limited to the relatively narrow procedural aspects of the case, I think it important to clarify at the outset both what my opinion does *not*, as well as what it does, cover.

First, I am neither taking any position herein on the issue of abortion, nor am I expressing any opinion on whether abortion is an appropriate subject for entertainment programming in general, or for "Maude" in particular. These are both emotionally-charged, sensitive and difficult issues that have nothing to do with the procedural infirmity which has prompted this dissent.

Moreover, I am expressing no opinion on whether WCBS–TV has provided other programming on the "Maude" series, or elsewhere, to "balance" the subject matter presented on the programs in question. Again, this is a subject I need not reach today.

Rather, my dissent is limited to the procedural straight-jacket in which the majority's decision straps fairness complainants; a restraint

which, in effect, denies them a substantive ruling until they meet a burden that, as a practical matter, can never be met.

In the June 12, 1973 letter-opinion which is the subject of our review, the Division Chief notified Complainants that:

> * * * assuming *arguendo* that the program [raised a controversial issue of public importance], you have not provided the Commission with any information indicating that the station has presented only one side of such issue in its *overall* programming.

The letter then concluded that Commission action would not be warranted until Complainants provided "* * * specific, detailed information to support a claim that the licensee has failed in its overall programming to comply with the fairness doctrine * * *"

In other words, before the staff would even *consider* the merits of the complaint (*i.e.*, what issue was raised and whether it was controversial and of public importance), Complainants were required to submit *proof* that WCBS–TV *had not* carried other programming balancing the issues raised in the "Maude" telecasts. Besides being an unreasonable requirement with no legal basis, it is ludicrous for this Commission to sanction a procedural rule requiring members of the *public* to submit *proof* of something the licensee has *not* broadcast.

Nevertheless, Complainants attempted to meet the burden. In their letter seeking review of the Bureau's decision, Complainants set forth all of the information at their disposal:

> The "MAUDE" programs have been monitored and said programs have never presented the pro-life position on abortion.

Complainants added that no other programming designed to balance the "Maude" presentations had been broadcast.

What other proof would we require of public complainants who have access neither to station program logs nor to transcripts—because current FCC rules keep such public documents secret? Would we require them to watch television eighteen hours a day, seven days a week, 365 days a year in order to compile lists of everything *not* broadcast in the event that they might want to file a fairness complaint sometime in the future? If the Commission needs more detailed information about a licensee's programming, clearly it must be obtained from the only source of that information available to anyone, including the Commission—namely, the licensee.

Only the most myopic interpretation of our fairness guidelines would require complainants to set forth with precision what the licensee has *not* broadcast before we will consider the merits of a complaint. Neither logic nor law suggests such a procedure which, in addition to being nonsensical, misconstrues the fundamental requirements of the fairness doctrine as articulated nearly ten years ago:

> Where complaint is made to the Commission, the Commission expects a complainant to submit specific information indicating (1) the particular station involved; (2) the particular issue of a controversial nature discussed over the air; (3) the date and time the program was carried; (4) the basis for the claim that the station has presented only one side of the question; and (5) whether the station had afforded, or has plans to afford, an opportunity for the presentation of contrasting viewpoints.[4]

[4] The complainant can usually obtain this information by communicating with the station.

Fairness Primer, 2 R.R.2d 1901, 1904 (1964).

In the same *Primer*, the Commission reiterated the necessity of obtaining substantive programming information from the licensee:

> If the Commission determines that the complaint sets forth sufficient facts to warrant further consideration it will promptly advise the licensee of the complaint and request the licensee's comments on the matter. Full opportunity is given to the licensee to set out all programs which he has presented, or plans to present, with respect to the issue in question during an appropriate time period. 2 R.R.2d at 1905.

In the instant case, Complainants set forth all of the facts at their disposal with specificity and precision. They met the burdens which reason and regulations imposed upon them. They were entitled to a determination on the merits of their complaint.

If the Commission needed additional information concerning the licensee's attempts or failures, in its overall programming, to provide balanced coverage of the issues in question, it should have requested those facts from the licensee.

The effect of the Commission's action is to sanction a procedural requirement which discourages public complaints and literally rips the heart out of the fairness doctrine. While it is true that the death knell of the doctrine has, of late, been sounded rather frequently, it seems chicken-hearted to destroy it on as flimsy a procedural infirmity as the Commission has chosen today.

I dissent.

F.C.C. 73-766

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice to
FIRST ILLINOIS CABLE TV, INC., RADIO STATION KFJZ, FORT WORTH, TEX.
Concerning Combination Rates

JULY 18, 1973.

FIRST ILLINOIS CABLE TV, INC.,
Radio Station KFJZ,
4801 West Freeway,
Fort Worth, Tex. 76107.

GENTLEMEN: It appears that you have been offering advertising rates in combination with Station KLIF, Fort Worth, Texas. It further appears that the Commission was advised of this fact as far back as 1963. A recent review of the application of the Commission's policies as to combination rates has again brought this matter to the Commission's attention.

As you may be aware, the Commission adopted a Public Notice on January 30, 1963, in which it enunciated its policy as to combination advertising rates. In this Public Notice, the Commission states that combination rate agreements or practices by independent stations serving the same area raise serious questions under the policies underlying the anti-trust laws (15 U.S.C. 1), conflict with established Commission policy, and are contrary to the public interest.

The Commission's files reveal that KLIF is licensed to operate on 1190 kilohertz with 50,000 watts daytime and 5,000 watts at night, using directional antennas both day and night. It appears that it places a signal of 3 mV/m over Fort Worth at night and a signal of 40 mV/m over Fort Worth during the day. Station KFJZ, Fort Worth, Texas, is licensed for operation on 1270 kilohertz with 5,000 watts using a directional antenna both day and night. It appears that KFJZ places a 4 mV/m signal over Dallas both day and night.

Pursuant to Section 73.182(f) of the Rules the signal necessary to render primary service to city business or factory areas is 10 to 50 mV/m, and the signal necessary for primary service to city residential areas is 2 to 10 mV/m. Therefore, it appears that KLIF renders primary service to Fort Worth during daytime hours, and renders primary service to Fort Worth residential areas at night. Station KFJZ renders primary service to Dallas residential areas both day and night.

In view of the service rendered to Fort Worth by KLIF and that rendered to Dallas by KFJZ, we believe that the two stations serve

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substantially the same area. Therefore, we conclude that KLIF and KFJZ are operating in violation of the 1963 policy prohibiting independently owned stations serving substantially the same area from using combination rates.

If you are offering combination rates, it is requested that within twenty days you state what action you have taken or propose to take to sever this relationship.

Chairman Burch absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

F.C.C. 73-1020

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application by BOARD OF TRUSTEES FOR THE VINCENNES UNIVERSITY, D.B.A. FULL V.U. TELEVISION, VINCENNES, IND. For Certificate of Compliance	CSR-463, CAC-2752/55, 2987

OCTOBER 3, 1973.

FLETCHER, HEALD, ROWELL, KENEHAN, AND HILDRETH,
1225 Connecticut Avenue, NW.,
Washington, D.C. 20036.

GENTLEMEN: On August 28, 1973, you filed a "Request for Special Temporary Authorization" (CSR-463) on behalf of the Board of Trustees for the Vincennes University, d/b/a Full V.U. Television, operator of cable television systems at Vincennes, portions of Knox County, and Washington, Indiana; and Lawrenceville and Bridgeport, Illinois. Full V.U. Television seeks authority to carry the signal of Station WIIL-TV, Channel 38 (ABC), Terre Haute, Indiana, on its cable television systems until action can be taken on its pending applications for Certificates of Compliance (CAC-2752/55, 2987).

In support of its request, Full V.U. alleges that each of its systems is located outside all television markets, but within at least the predicted Grade B contour of Station WIIL-TV; that WIIL-TV is therefore entitled to carriage pursuant to Section 76.57(a) of the Commission's Rules; that WIIL-TV has requested carriage, and Full V.U. Television has filed its applications for Certificates of Compliance; that action on these uncontested applications could be held up for months; and that such delay in carriage could not help Station WIIL-TV in getting established in the Terre Haute market. In this regard, Alpha Broadcasting Corporation, permittee of Station WIIL-TV, sent a letter on August 27, 1973, supporting Full V.U. Television's request.

In these circumstances, the Commission herewith waives Section 76.11 of the Commission's Rules to allow immediate carriage of Station WIIL-TV by the above-listed cable television systems operated by Full V.U. Television. This authorization will expire for each system fifteen (15) days after final Commission action on its pending application for Certificate of Compliance.

BY DIRECTION OF THE COMMISSION,[1]
VINCENT J. MULLINS, *Acting Secretary.*

[1] Commissioner Robert E. Lee was absent.

F.C.C. 73-1119

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF GARDEN OF THE GODS BROADCASTING CO. LICENSEE OF RADIO STATION KEDI, MANITOU SPRINGS, COLO.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 29, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has under consideration its Notice of Apparent Liability dated April 18, 1973, addressed to Garden of the Gods Broadcasting Company, licensee of Radio Station KEDI, Manitou Springs, Colorado.

2. The Notice of Apparent Liability in the amount of five hundred dollars ($500) was issued for violation of Section 1304, Title 18, U.S. Code, in that the licensee broadcast information relating to a lottery.

3. It appears from the circumstances in this case that the licensee promoted a contest in conjunction with the Pizza Hut whereby the letters K, E, D and I were stamped on platters on which pizza was served, that to control the number of winners only thirty platters were stamped with the letter E, and that in order to win, a person had to collect all four letters. Also, it appeared that a platter with a letter on it was furnished with each pizza sold and that a winner was given either a $10 gift certificate from Miller Music Co. for records and/or tapes, or a $30 gift certificate for the purchase of clothes from Poobah. Further, it appears that the contest was promoted beginning November 21 through December 24, 1972, that winners were announced beginning December 20 until December 28, 1972, and that many of the announcements concerning the contest were ad-libbed but were taken from the following promotional announcement which was broadcast throughout the length of the contest:

KEDI PIZZA PLATTER PRIZE POWER GIVES YOU A CHANCE TO WIN AT ANY OF THE FOUR PIZZA HUTS IN THE SPRINGS.

WIN A $10.00 GIFT CERTIFICATE FROM MILLER MUSIC OR A $30.00 CLOTHES CERTIFICATE FROM POOBAH JUST BY COLLECTING FOUR PIZZA PLATTERS WITH THE LETTERS K, E, D, AND I ON THE BACK. THEY'RE ONLY

AVAILABLE AT PIZZA HUT, AND ONLY IF YOU ASK FOR AN OFFICIAL KEDI PIZZA.
YOU CAN WIN * * * JUST START MUNCHING.

4. We find all the elements of lottery present in this promotion. Prizes were awarded in the form of merchandise, consideration was necessary in that a participant was required to purchase pizzas, and chance was present since only a few of the platters were stamped with the letter E and participants had no way of knowing in advance whether they would receive platters which would make them eligible for a prize. Accordingly, we find that the licensee violated Section 1304, Title 18, U.S. Code in broadcasting announcements beginning November 21 through December 24, 1972.

5. The Notice of Apparent Liability was mailed to the licensee on April 19, 1973 by Certified Mail—Return Receipt Requested. Although the return receipt indicates that the licensee received the Notice on April 23, 1973, the licensee failed to reply to the Notice within the thirty-day period prescribed by Section 1.621 of the Commission's Rules, and has not made reply subsequent to the expiration of the thirty-day period.

6. In accordance with the provisions of Section 503(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules [1], IT IS ORDERED, That Garden of the Gods Broadcasting Company, licensee of Radio Station KEDI, FORFEIT to the United States the sum of five hundred dollars ($500) for violation of Section 1304, Title 18, U.S. Code. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Federal Communications Commission. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within thirty days of the date of receipt of this Memorandum Opinion and Order.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Garden of the Gods Broadcasting Company, licensee of Radio Station KEDI, Manitou Springs, Colorado.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[1] Section 1.621 of the Commission's Rules provides, in pertinent part, as follows: "If the licensee * * * fails to take any action in respect to a notification of apparent liability for forfeiture, an order shall be entered establishing the forfeiture as the amount set forth in the notice of apparent liability."

F.C.C. 73–1061

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of GARRYOWEN CORP., HELENA, MONT. For Construction Permit for Changes in Facilities of KTCM	BPCT–4611

OCTOBER 11, 1973

GARRYOWEN CORPORATION
c/o Mr. John H. Midlen,
Midlen and Reddy,
1990 M Street NW.,
Washington, D.C. 20036.

GENTLEMEN: This is in reference to your petition to deny the application (BPCT–4611) of Capital City Television, Inc., for a construction permit for changes in the authorized facilities of KTCM, channel 12, Helena, Montana, and to your letter, dated October 1, 1973, agreeing to withdraw your objection to the application if the Commission would require, as part of the construction permit, that Bob Magness sever his connection with and sell his stock in Capital City Television, Inc.

Your objections to the grant of the application were: (1) the extension of KTCM's predicted Grade B contour over several communities served by cable television systems in which Mr. Magness, Vice President and Director and 43.33 percent shareholder of Capital City Television, Inc., had a substantial interest; (2) the potential for abuse occasioned by Mr. Magness' position as Chairman of the Board of a common carrier providing microwave relay services to television stations in Montana; and (3) questions concerning the adequacy of financing arrangements for the construction of the new facilities.

On September 24, 1973, the Commission received from Capital City Television, Inc., a copy of a letter of intent committing Mr. Magness to sell all his interest in the corporation to Tim Babcock, President of Capital City Television, Inc. Closing of this sale, which the parties contemplate will occur on or before November 15, 1973, will moot any of the possible cross-ownership or conflict of interest issues you have raised. Capital City Television, Inc., has also amended its application to assure that adequate financing is available.

In view of the foregoing, and inasmuch as we find Capital City Television, Inc., legally, financially and technically qualified to construct and operate the new facilities, we conclude that grant of the application would serve the public interest. However, as a condition attached

to the construction permit, Mr. Bob Magness will be required to complete the sale of all his interest in Capital City Television, Inc., and resign his position as Vice President and Director, before any program test authority will be granted.

Therefore, your petition, per your request of October 1, 1973, is dismissed.

Commissioner Robert E. Lee was absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-371

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ROBERT BARBER, JR., GEORGE SLIMAN, AND F. M. SMITH, D.B.A. GULF BROADCASTING CO., GULFPORT, MISS.	Docket No. 19466 File No. BP-18462
HWH CORP., MCCOMB, MISS.	Docket No. 19467 File No. BP-18478
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted November 1, 1973; Released November 2, 1973)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER DISSENTING; MEMBER PINCOCK ABSENT.

1. This proceeding involves the above-captioned applications of Michael D. Haas (Haas), Gulf Broadcasting Company (Gulf), and HWH Corporation (HWH), for authorization to construct new standard broadcast stations. The applications were designated for hearing by Commission Memoradum Opinion and Order, FCC 72-232, released March 23, 1972, on various issues, including, *inter alia*, a Section 307 (b) issue. Now before the Review Board is an appeal by Southwestern Broadcasting Company of Mississippi (Southwestern)[1] requesting reversal of the Presiding Officer's final ruling, FCC 73M-802, released July 9, 1973, or such other relief as the Review Board deems appropriate.[2]

2. The appeal stems from the ruling on a Joint Request for Approval of Agreement, filed March 5, 1973, seeking the dismissal of the Haas application and grant of the Gulf and HWH applications. Southwestern opposed the request on the grounds that publication by Haas pursuant to Section 1.525(b) was required since dismissal without publication would unduly impede the fair, efficient and equitable distribution of radio service. In a Memorandum Opinion and Order, FCC 73M-650, released June 1, 1973, the Judge approved the agreement, dismissed the Haas application with prejudice, and ordered that the Gulf and HWH applications be retained in hearing status; however,

[1] A petition for leave to intervene in this proceeding was filed by Southwestern on April 28, 1972, and granted by Order of the Administrative Law Judge, FCC 72M-674, released May 22, 1972. Southwestern is the licensee of Radio Stations WAPF and WCCA (FM), McComb, Mississippi.

[2] Other pleadings before the Review Board are: (a) Broadcast Bureau's comments, filed August 30, 1973; (b) opposition, filed August 30, 1973, by Haas; (c) opposition, filed August 30, 1973, by Gulf; (d) opposition, filed August 31, 1973, by HWH; (e) reply, filed September 13, 1973, by Southwestern; and (f) motion for leave to file over-size reply, filed September 13, 1973, by Southwestern. The motion to file over-size reply will be granted; Southwestern's reply is addressed to three oppositions and the Bureau's comments, and it is only one page more than the rules allow.

the Judge did not rule upon the publication question. The Judge's failure to rule on the question of publication was the subject matter, *inter alia*, of a further prehearing conference, held June 27, 1973. At the conclusion of this conference, the Judge ruled that publication by Haas was not required, and that the applications of HWH and Gulf were granted and the proceeding terminated. Prior to the release of the Order formalizing these rulings, on June 28, 1973, the applicants submitted to the Judge a "suggested form of order" stating reasons to support the Judge's decision which he might use in his forthcoming written decision. On July 9, 1973, the Judge released the Order, FCC 73M–802, which is the subject of the instant appeal.

3. Initially, Southwestern argues that reversal of the Judge's ruling is warranted because the Judge failed to adequately consider the need for publication and failed to give any independent reasons for reaching the conclusion that publication was not required. In support thereof, Southwestern points to the fact that the Judge gave no reasons at the prehearing conference for his ruling on the publication question and thereafter merely adopted *verbatim* (except for the last clause ordering termination of the proceeding) the "suggested form of order" submitted by the applicants. Furthermore, Southwestern urges that publication is required under the facts of this case as a matter of law and sound public policy, citing *Capitol Broadcasting Corp.*, FCC 72–224, 23 RR 2d 1194, *reconsideration denied*, 34 FCC 2d 846, 24 RR 2d 336 (1972).[3] Southwestern contends that a stronger case is presented here for publication than in *Capitol*, *supra*, because of the greater disparity between the number of transmission facilties in the instant case.[4] In addition, Southwestern contends that *Howard M. McBee*, 19 FCC 2d 800, 17 RR 2d 351 (1969), relied upon by the Judge in his ruling, is inapposite because in that case the merged and dismissed applicants proposed service to communities with substantially identical populations and no aural transmission services.

4. The Review Board is of the view that the Judge did not err in ruling that publication pursuant to Section 1.525 is not required.[5] The Haas application is mutually exclusive with each of the other two applications in this proceeding; however, the applications of Gulf and HWH are not mutually exclusive. This situation results in a substantial reception service advantage of the Gulfport and McComb combination of grants as compared to the grant of the Haas application for Bay St. Louis.[6] It also appears that Bay St. Louis, a community of 6,752 population, has been issued a construction permit for a local fa-

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[3] In that case, the Commission found that publication was required where approval of the agreement without publication would give the surviving applicant's community three aural broadcast facilities while leaving the dismissing community with only one.

[4] Southwestern asserts that Bay St. Louis (population 6,752) would be left with one local aural service while Gulfport (population 40,791) and McComb (population 11,969) would receive their fifth and fourth aural services, respectively.

[5] Although the Judge's Order is substantially identical to the "suggested form of order" submitted by the applicants, we have no reason to believe, as appellants suggest, that the Judge failed to give proper consideration to the arguments of Southwestern relating to the publication question. See *WHAS, Inc.*, 31 FCC 273 at 283 (1961).

[6] The proposed population coverage figures are as follows:

	0.5 mv/m contour
Gulf-HWH (Gulfport-McComb)	233,341
Haas (Bay St. Louis)	26,173

cility,[7] and receives four primary services which cover all areas of the community. While McComb and Gulfport have more transmission services than Bay St. Louis, the former communities are substantially larger.[8] In light of the foregoing, the Board concludes that the Presiding Judge's determination that dismissal of the Haas application without publication would not unduly impede the objectives of Section 307(b), should not be reversed.

5. Accordingly, IT IS ORDERED, That the motion for leave to file over-size reply, filed September 13, 1973, by Southwestern Broadcasting Company of Mississippi IS GRANTED; and that the appeal from Presiding Officer's final ruling, filed August 8, 1973, by Southwestern Broadcasting Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[7] Bay Broadcasting Corp.'s application, BP–17244, in Docket No. 18413, for a standard broadcast station at Bay St. Louis, was granted by Order, FCC 73D–11, released March 14, 1973, 40 FCC 2d 918, and became final on May 15, 1973.

[8] *Capitol Broadcasting Corp., supra,* relied upon by Southwestern, is distinguishable on the facts from the instant case. In *Capitol,* the dismissing community, left with only one local aural transmission facility, was on a par in terms of population with the surviving community. Moreover, there was no indication of a large disparity in reception service as there is here, and grant of the agreement did not, as it does in this case, result in immediate inauguration of two new transmission services.

F.C.C. 73-1106

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re request by
JAMES HOPPERS, JACKSON, TENN.
For Declaratory Ruling

OCTOBER 25, 1973.

THOMAS H. WALL, ESQUIRE,
Dow, Lohnes & Albertson,
1225 Connecticut Avenue NW.,
Washington, D.C. 20036.

DEAR MR. WALL: This refers to your letter dated October 12, 1973, concerning the proposed employment of Mr. James Hoppers as General Manager of Stations WTJS–AM–FM, Jackson, Tennessee. You state that certain questions have arisen with regard to Mr. Hoppers because of the Commission's "cross-interest" policies and that these questions have prompted your letter in order that the Commission be fully apprised of the facts and circumstances surrounding his employment. You ask that the Commission make known any questions it may have concerning this matter.

The facts and circumstances of Mr. Hoppers proposed employment at WTJS as set out in your letter may be summarized as follows: Mr. Hoppers has a 2% partnership interest in the licensee of Station WDXI, also in Jackson, which has pending an application for the Commission's consent to assign its license to Community Service Broadcasting, Inc., a corporation in which Mr. Hoppers has no interest. For 25 years Mr. Hoppers has resided in Jackson and has been associated with WDXI. On August 22, 1973, he resigned his position at the station and left its employ. He now has the opportunity to be employed as General Manager at Stations WTJS–AM–FM by the new owners of these stations. (On October 4, 1973, the Commission granted the application for the transfer of control of WTJS, Inc., licensee of Stations WTJS–AM–FM to West Tennessee Broadcasters, Inc. (BTC–7211)). Because of the "cross-interest" questions which would exist by his continuing interest in WDXI, Mr. Hoppers has attempted to dispose of this partnership interest by offering it for sale to the other partners or "at large" and has attempted to discount this interest to a bank at 10%. These efforts proved unsuccessful and, as a last resort, in order to insulate his WDXI interest from any possible conflicting cross-interest, Mr. Hoppers placed his WDXI interest in an irrevocable trust on September 18, 1973, including the relinquishment of any voting rights he might have in the partnership.

Historically, the Commission's "cross-interest policy," designed to insure "arms-length" competition among broadcasting stations, prohibited *any* degree of cross-interests in two or more stations in the same service which serve substantially the same market. While it may be true that at a given time no impairment of competition exists in fact, it is the potential of such impairment which the Commission's policy is designed to guard against.

We have considered all of the matters set forth in your letter. Based upon the representations contained therein and in view of (a) the size of Mr. Hoppers' interest in WDXI, (b) his unsuccessful efforts to dispose of it, (c) the placement of that interest in an irrevocable trust and (d) the undue hardship which would be created by the strict enforcement of the "cross-interest policy" here, the Commission will not object to Mr. Hoppers' employment as General Manager of Stations WTJS–AM–FM so long as he does not vote his interest or take part in the management of WDXI in any way. Cf. *Letter to John L. Tierney, Esquire* FCC 71–435, April 28, 1971.

Commissioner Robert E. Lee absent; Commissioner Johnson dissenting.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1108

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
KACY, INC. (KACY), PORT HUENEME, CALIF.
Has: 1520 kHz, 1 kW, 50 kW-LS, DA-2, U
Requests: 1520 kHz, 5 kW, 50 kW-LS, DA-2, U
For Construction Permit

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 30, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT. COMMISSIONERS WILEY AND HOOKS CONCURRING IN THE RESULT.

1. The Commission has before it for consideration (i) the above-captioned application; and (ii) a petition for reconsideration filed June 14, 1973, by KACY, Inc., directed against the Commission's action of May 9, 1973, denying the applicant's request for waiver of section 73.37(e)(3)(ii) or (iii).[1]

2. In support of its petition KACY admits that the city of license, Port Hueneme, is now covered by KACY but that acceptance and favorable consideration of the application for a power increase is justified on the basis of the following new facts:

(a) An engineering exhibit has now been submitted which shows where new service would be provided by the KACY proposal.

(b) Applicant's consulting engineer states that the power increase sought by KACY would not preclude the use of the 1520 kHz channel in areas where a new station might be assigned.

(c) It is contended that not very many stations are faced with the wide-area coverage responsibilities which confront KACY and that additional night power is needed to provide adequate coverage.

(d) Letters were submitted from public leaders which represent 21 separate interest groups. All of the letters encourage favorable consideration of the KACY proposal on the grounds that additional power is needed to provide adequate service to adjacent communities which have common needs and interests.

3. With regard to the engineering material submitted, it does not include any additional information which was not already on file or

[1] The proposed KACY nighttime power increase does not comply with section 73.37(e)(3)(ii) because all of the city of Port Hueneme is included within the existing nighttime limitation contour of KACY. Compliance with section 73.37(e)(3)(iii) is not achieved because all of the proposed gain area presently receives service from other standard broadcast stations. The Note to section 1.571 as well as section 73.37(e) forbids acceptance of the KACY application unless it complies with one of the foregoing sections.

which had not been previously determined by our own technical studies. Moreover, we cannot agree with petitioner's bare assertion that the requested power increase would not result in a degradation of the channel by precluding use of 1520 kHz elsewhere since it is not supported with any specific data. The other material submitted by the petitioner, including the 21 letters from public leaders, can be summarized as follows: The present daytime power of KACY is adequate for extended coverage and the present nighttime operation of KACY provides satisfactory service to the city of Port Hueneme, but additional nighttime power is needed to provide service to adjacent communities, including Ventura, Santa Paula, Oxnard, Ojai, Camarillo and Ventura County, all of which are closely interlinked because of common civic, economic and political interests. Indeed, the daytime power and coverage of KACY is substantially greater than its nighttime operation.[2] However, petitioner has not articulated or even mentioned a basic physical consideration of radio propagation which explains why the primary service area of a standard broadcast station is generally much smaller during nighttime hours than it is during the daytime, even if the transmitting power is the same for both periods.[3] During daytime hours of operation, the signal of a standard broadcast station is propagated by the groundwave and travels a relatively short distance. However, during nighttime hours, skywave propagation conditions are in effect and the signal radiated from the antenna is returned to earth by the ionosphere after traveling great distances. As a result of these effects, stations operating on the same channel during nighttime hours may impose relatively high interference limitations on each other even though they are physically separated by several hundred miles. Consequently, nighttime primary service areas generally cover only a small part of the area which is served by the same station during daytime hours. In our Order of May 9, 1973, which returned the KACY application as unacceptable for filing, we noted that even if KACY were permitted to increase nighttime power to 50 kilowatts (maximum permitted in the standard broadcast band), its nighttime service contour would still cover less than 15 percent of Ventura County. We also would note that due to the difference between daytime and nighttime propagation characteristics, our rules and technical standards[4] specify protected service areas for all standard broadcast stations, excluding clear channel class I facilities, which have greatly different signal intensity values for daytime and nighttime hours.

4. We have carefully considered the information submitted by KACY in support of its petition for reconsideration and conclude that no new material has been submitted which would persuade us that our original ruling should be altered. In denying the requested waiver of section 73.37(e)(3) we found that essentially all of the increased area that would be served by the proposed KACY power

[2] We would note that many unlimited-time standard broadcast stations operate with less power during nighttime than daytime.

[3] An exception to this general situation concerns certain class I clear channel stations which operate essentially interference-free day and night and as a result provide primary service to the same area during both periods.

[4] Section 73.182.

increase presently receives service from at least four standard broadcast stations and four FM stations. We have adequately described, we believe, why standard broadcast nighttime service areas, regardless of power, are inherently smaller than daytime service areas. It is apparent, of course, that if we were to authorize power increases in order to permit existing stations to serve their entire home county rather than their city of license, the required power in many instances would be so great that the standard broadcast band could not possibly accommodate all of the existing stations (over 4,300). The net result would be the depletion of the AM spectrum to the extent that assignments could not be made in those areas where there is inadequate existing service by any reasonable standard. Finally, in denying the KACY request for waiver, we made it clear that under section 307(b) of the Communications Act, the Commission's mandate to provide for a "fair, efficient and equitable distribution of radio service" includes the consideration of *power*, and that the proper distribution and utilization of power is as important to efficient allocation as is the consideration of frequencies.

5. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by KACY, Inc., IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1117

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF KMIN, INC., LICENSEE OF RADIO STATION KMIN, GRANTS, N. MEX.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 29, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER REID CONCURRING IN THE RESULT.

1. The Commission has under consideration an application for mitigation or remission, filed May 8, 1973, on behalf of the licensee of KMIN, of the two thousand dollar ($2,000) forfeiture imposed by the Commission in its Memorandum Opinion and Order adopted April 4, 1973, 40 FCC 2d 434 (1973).

2. The forfeiture was assessed for repeated violations of Section 73.87 of the Commission's Rules and failure to observe the terms of the station license in that the licensee commenced operation at 6:00 a.m., Mountain Standard Time (MST) from February 1 through February 5, 1971, and on March 1, 2, 3, 4, 5, 8, 9, 10, 11, and 12, 1971 whereas the station license authorized operation to begin at 7:00 a.m. MST in February and 6:30 a.m. MST in March.

3. In the application for mitigation or remission, licensee states that the violations were unintentional and resulted from a good faith belief that the licensee was authorized to commence operation "at 6:00 a.m. on a year-round basis [stemming] from the fact that the previous owner of KMIN—and apparently owners before him—had followed such a practice and it was simply continued at the time KMIN, Inc. became the licensee of the station." Licensee contends that the operation did not cause harmful interference to any other station since such a matter was never brought to its attention. Licensee states that as soon as it was apprised of the violation, it took immediate corrective action, and that although the violation was repeated it was not willful. Licensee requests that the Commission take into consideration its lack of intent and remit the forfeiture. In the alternative, it requests mitigation because the forfeiture is excessive for a city the size of Grants, New Mexico (population 8,768 by 1970 census), and asserts that the forfeiture is "unfair both in comparison with forfeitures assessed against other stations in vastly larger markets and in view of the nature of the offense." Licensee argues that since the Commission's primary concern is to assure compliance with the Rules, it has already accomplished the goal by delivering the Notice of Violation.

4. We previously considered the licensee's assertions that the violations were not willful, and that it was only continuing a practice of a former licensee. A licensee will not be excused for violations that were a continuation of a practice begun by a former licensee, nor will it be excused for past violations because of later corrective action. *Executive Broadcasting Corporation*, 3 FCC 2d 600 (1966). The licensee's financial condition was considered when the forfeiture was assessed. Regarding the argument that no forfeiture should be assessed and that amount is excessive, as we have stated, unauthorized presunrise operation, because of its potential for interference to other broadcast stations, has always been considered a serious matter warranting the application of substantial sanctions when the circumstances under which the violations were committed so indicated. *The McLendon Corp.*, 18 FCC 2d 224 (1969). In determining the amount of a forfeiture, the Commission considers many factors, including the seriousness of the violations, their duration and the financial condition of the licensee. *The McLendon Corp., supra.* Considering all the circumstances in this case, we are not persuaded to mitigate or remit the forfeiture.

5. Accordingly IT IS ORDERED, That the application for mitigation or remission filed May 8, 1973 by KMIN, Inc., IS DENIED.

6. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to KMIN, Inc., licensee of radio station KMIN, Grants, New Mexico.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

104-015—73——5

F.C.C. 73–1105

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CLYDE B. LOVE, W. R. PATTON, ET AL., D.B.A. MINERAL KING BROADCASTERS, ASSIGNOR and EAST-WEST FM GROUP, INC., ASSIGNEE For Assignment of License of Station KKNU–FM, Fresno, Calif.	BALH–1807; BASCA–560

OCTOBER 25, 1973.

EAST-WEST FM GROUP, INC.,
5361–D North Third Street,
Fresno, Calif. 93710.

GENTLEMEN: This is in reference to the application to assign the license of Station KKNU–FM Fresno, California, from Clyde B. Love, W. R. Patton, et al., doing business as Mineral King Broadcasters, to East-West FM Group, Inc. (BALH–1807; BASCA–560).

On May 17, 1973, the Commission adopted a Notice of Inquiry into Subscription Agreements between Radio Broadcast Stations and Musical Format Companies, Docket 19743. As set forth in the application, Station KKNU–FM has a contract with Stereo Radio Productions, Ltd. (Schulke) for a music program format, and this contract will be assumed by the assignee, East-West FM Group, Inc. Therefore, in view of this inquiry, the Commission on October 25, 1973, granted the above assignment application subject to the condition that it is without prejudice to whatever the Commission may deem appropriate upon the conclusion of these proceedings.

Commissioner Robert E. Lee absent; Commissioner Johnson dissenting.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73–1147

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF MINSHALL BROADCASTING COMPANY, INC., LICENSEE OF STATION WCJB–TV, GAINESVILLE, FLA.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted October 31, 1973; Released November 5, 1973)

BY THE COMMISSION:

1. The Commission has under consideration (1) its Notice of Apparent Liability to Minshall Broadcasting Co., Inc., for forfeiture of $1,000, dated March 7, 1973, and (2) the responses of licensee and its counsel to the Notice of Apparent Liability dated April 11, 1973, denying liability for the forfeiture proposed.

2. Station WCJB–TV, Channel 20, Gainesville, Florida, is licensed to Minshall Broadcasting Company, Inc., (hereinafter Minshall), also of Gainesville. The Notice of Apparent Liability in this matter was issued to Minshall for its apparent failure to comply with the sponsorship identification requirements set forth in Section 317(a)(1) of the Communications Act of 1934, as amended, and Sections 73.654(a) and 73.654(g) of the Commission's Rules in that it willfully or repeatedly failed to broadcast an announcement identifying the sponsor and disclosing the fact of the challenged messages' sponsorship.

3. The facts disclosed by the Commission inquiry prior to the issuance of the Notice of Apparent Liability and Minshall's response to the Notice disclose that the station broadcast two messages, each virtually indistinguishable from the other, on twenty-six occasions from December 1 through December 4, 1972. One such message stated:

> The City Commission is attempting to pass a flood control ordinance which would stifle building and growth in Gainesville and put hundreds of people out of work. A group of concerned citizens plan to present a petition to the City Commission on Monday night asking that the Commission postpone action until a reasonable, well-planned, ordinance can be prepared. Petitions are available in the Gainesville Mall. The concerned citizens urge you to sign one of the petitions. Do it today.

For broadcasting the twenty-six messages, the station received $900. Further, while licensee disputes the application of the relevant provisions of the statute and Rules, it acknowledges that an announcement disclosing that the messages were paid for or sponsored did not accompany the presentation of the messages at the time those messages

104–015—73——6

were broadcast. Minshall asserts, however, that the sponsor was "Concerned Citizens," and that the two references to "Concerned Citizens" in the text of the message sufficed as an appropriate sponsorship identification announcement according to the terms of the applicable sponsorship identification requirements. The station's logs evidenced that the messages were sponsored by "Concerned Citizens," and a list of the times the messages were broadcast contained the names of the sponsor's principal officers. Minshall additionally asserts as fact that prior to the broadcast of the referenced messages, it communicated with counsel regarding the elements of an appropriate sponsorship identification announcement; that subsequent to the broadcasts of the messages, it was discovered that a misunderstanding existed over Minshall's use of the term "disclaimer" employed during those earlier conversations; that the existing, but then unrecognized, misunderstanding of the use of that term caused Minshall to believe that a "disclaimer" need not be broadcast, but that Minshall's sponsorship obligations would be met if the message identified the sponsor and if a list of the sponsor's principal officers were maintained at the station for public inspection; and that resultantly, the messages were broadcast without a statement to the effect that the messages were sponsored, paid for or furnished and on whose behalf such sponsorship was undertaken. From these apparent facts, the Commission determined in its Notice (1) that the messages broadcast fell within the scope of the sponsorship identification requirements, (2) that a proper sponsorship identification was not made at the time of the challenged broadcasts, (3) that the station's failure to comply with the provisions of the statute and the Rules pertaining to sponsorship identification was willful or repeated, and (4) that, therefore, pursuant to Section 503(b)(1)(B) of the Communications Act, Minshall was subject to a $1,000 forfeiture. In finding that the station apparently had failed to broadcast an appropriate sponsorship identification announcement, the Commission determined that references to "Concerned Citizens" in the text of the message did not sufficiently identify the sponsor and that such references could not be read, either expressly or impliedly, as a disclosure that the message was paid for or sponsored.

4. In response to the Commission's Notice of Apparent Liability for forfeiture, Minshall and its counsel deny liability for Minshall's apparent failure to comply with Section 317(a)(1) of the Communications Act of 1934, as amended, and Sections 73.654(a) and 73.654(g) of the Commission's Rules. Minshall, in support of its denial of liability, adduces the following arguments:

(a) The thirty-second message challenged here is not a "program" within the contemplation of Section 73.654(g) of the Rules;

(b) Sections 317(a)(1) of the Act and 73.654(a) of the Rules form no basis for Minshall's alleged liability for forfeiture on the facts of the instant matter since Commission interpretations of those provisions exempt "controversial issue announcements" from the requirement that an announcement disclosing that the message is paid for or sponsored be made. Rather, those sections require only that the name of the sponsoring entity be identified in the announcement, a requirement Minshall asserts it met;

(c) Alternatively, even though the facts may show a "technical violation of the rules," liability should not attach since the "technical violations" arose out of a factual misunderstanding during the course of Minshall's conversations with counsel prior to the broadcasts, regarding the legal obligations the licensee would be compelled to meet at the time of the broadcasts; and

(d) In light of Section 503 of the Communications Act, the Notice of Apparent Liability was, as a matter of law, improperly issued since the Commission, in the Notice, erroneously construed certain factual and legal positions asserted by Minshall in its response to the Commission's letter of inquiry, thereby violating the procedural safeguards inherent in Section 503.

With respect to these arguments, Minshall asserts that because Section 503 of the Act—the applicable forfeiture provision—is penal in nature, the substantive provisions which Minshall is alleged to have violated must be construed strictly. Minshall posits the additional proposition that the Commission bears the burden of showing by "clear and convincing" evidence that it has wilfully or repeatedly failed to comply with the pertinent sponsorship identification provisions. Each of these arguments will be treated *seriatim* below.

5. The essential facts, recited above in paragraph 3, are not in dispute. Because the facts relevant to adjudication are undisputed, there is no need, as Minshall contends, to allocate burdens of proof or to determine the weight of the evidence to be employed to determine whether Minshall has failed to meet its legal obligations. It is only necessary that the Commission determine whether, on these undisputed facts, disclosed through the Commission's inquiry and the licensee's response to the Notice of Apparent Liability, Minshall, as a matter of law, has violated its obligation under Section 317(a)(1) of the Act and Sections 73.654(a) and 73.654(g) to make an appropriate sponsorship identification announcement at the time the messages were broadcast. If these undisputed facts attest to the proposition, posited in the Notice of Apparent Liability, that Minshall failed to comply with the legal requirements under the Commission's interpretation of those relevant provisions of law, and if the facts show, in accordance with Section 503(b)(1)(B) of the Act, that the violation was willful or repeated, then an order assessing a forfeiture against Minshall will properly issue. Similarly, we need not now decide whether the pertinent substantive provisions of the Statute and the Rules be construed "strictly;" for the reason that a penal sanction, i.e., the forfeiture, will be assessed upon a finding of Minshall's violation of the sponsorship identification requirements. Even under the most rigid or strict reading of these applicable provisions—that is, even if the narrowest interpretation is given those sections from the perspective of Congressional and Commission intent as to those sections' meaning—the facts under scrutiny here show Minshall's repeated failure to comport itself in accordance with the terms and conditions of the sponsorship identification requirements.

6. Minshall first contends that Section 73.654(g) of the Rules,[1] as a matter of law, applies only to "programs", and not "announcements" of the variety presented by WCJB–TV and questioned herein. In support of this contention Minshall cites FCC Form 301, Section IV–B, paragraph 10(b) wherein *commercial announcement* and program are defined. Additionally, Minshall cites the Commission's recently commenced rulemaking proceeding where amendment of Section 73.654(g) of the Rules was proposed. The amendment proposed in that proceeding would, among others, substitute "material broadcast" for "program", *Amendment of Sponsorship Identification Rules*, 34 FCC 2d at 1109, 37 FR 10583 (1972), and for this reason, Minshall argues, the Rule currently in force draws a distinction between "program" and the type of message referenced herein. The import of Minshall's argument, in this regard, is that because the questioned broadcasts were announcements, not programs, and because the Rule refers to "program," Section 73.654(g) forms no basis for liability on the facts here. We note first that as a matter of construction, the sponsorship identification requirements set forth in the Communications Act and the Commission's Rules consistently have been interpreted to include all matter broadcast which has been sponsored, paid for, or furnished. To this end, the use of the word "program" in Section 73.654(g) does not constitute a significant distinction from the use of "all matter broadcast" in Section 317(a)(1) of the Act or the Commission's use of "any matter" in Section 73.654(a) of its Rules. For purposes of the sponsorship identification requirements, then, a thirty-second controversial issue message does not differ from a program of greater length where those identifiable program units are paid for, sponsored, or furnished. In its long history of interpreting the Act and its Rules and administratively enforcing the sponsorship identification provisions therein, the Commission has never attempted to exempt brief controversial issue messages from the licensee's dual-pronged obligation to announce in clear and specific terms at the time of broadcast the identity of the sponsor and the fact that the matter broadcast was paid for or sponsored.[2] The very rulemaking proceeding cited by Minshall to show an existing substantial distinction between "program" and "announcement", and hence a distinction which would compel the Commission to look favorably upon WCJB–TV's failure to make an appropriate sponsorship identification announcement, contains language clearly refuting the proposition posited by Minshall. In *Amendment of Sponsorship Identification Rules*, *supra*, at 1104–5, the Commission stated:

> Under the requirements of Section 317(a) of the Communications Act of 1934, as amended, *and the Commission's Rules* promulgated thereunder, *broadcast matter for which payment is made or valuable material or services are furnished* by any person or group shall be an-

[1] In pertinent part, Section 73.654(g), 47 CFR 73.654(g) states:

> In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for, or furnished, either in whole or in part • • • by a corporation, committee, association, or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee association, or other unincorporated group • • •.

[2] See, *KOOL–TV, Southwestern Broadcasting Co., Lotus Broadcasting Corp.*, cited *infra*, text at paragraph 7.

nounced as paid for or furnished by that person or group at the time of the broadcast. (Emphasis added).

The Commission's statements in *Applicability of Sponsorship Identification Rules*, 40 FCC 141 (1963), likewise clearly envisaged the inclusion of sponsored controversial issue announcements within the ambit of the Act and the Rules. Example 33 [3] of that document specifically noted that the sponsored controversial issue spot announcements, similar to the ones broadcast by Minshall here, clearly fall within the sponsorship identification requirements, regardless of the length of the message or program broadcast. The Commission finds, therefore, that abundant authority exists to warrant the conclusion that the thirty-second messages broadcast by the station fall well within the scope and meaning of Section 73.654(g) of the Commission's Rules, and that that provision of the Rules forms a basis for liability for forfeiture on the facts under consideration.

7. Minshall next argues that Sections 317(a)(1) of the Act and 73.654(a) of the Rules form no basis for liability on the undisputed facts since the Commission's interpretations of these provisions command only that a full and fair identification of the sponsor be contained in the announcement. Minshall relies on example 33, *Applicability of the Sponsorship Identification Rules*, *supra*, and asserts that the Commission's interpretation there "expressly exempts controversial issue announcements from any requirement that they be tagged as having been sponsored or paid for within the meaning of the rules." Thus, since each of the thirty-second messages broadcast by the station contained references to "Concerned Citizens," Minshall contends, a legally sufficient sponsorship identification announcement was broadcast. As the Commission reasoned in its Notice of Apparent Liability to Minshall, this argument falls far short of a defensible position insofar as a denial of liability is concerned. Section 317(a)(1) of the Act and Section 73.654(a) of the Rules are identical in expressly requiring that when a licensee broadcasts matter for which it has received money an announcement must be made at the time of the broadcast disclosing the sponsor's identity and also disclosing that the matter broadcast was paid for.[4]

8. The Commission consistently has treated sponsored controversial issue messages as requiring that an appropriate sponsorship identification announcement be made at the time of broadcast and has held that the sponsor's identity and the fact of sponsorship be disclosed with specificity. *KOOL–TV*, 26 FCC 2d 42 (1970); *Southwestern Broadcasting Co.*, 9 FCC 2d 224, 10 RR 2d 560, 11 RR 2d 664 (1967); *Lotus*

[3] *Id.* at 150. See also, footnote 5, *infra*, for a recitation of the content of example 33.

[4] Section 317(a)(1) of the Communications Act, 47 U.S.C. 317(a)(1) states:

> *All matter* broadcast by any radio station for which any money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, *be announced as paid for or furnished*, as the case may be, by such person * * * (Emphasis added).

Section 73.654(a) of the Commission's Rules, 47 CFR 73.654(a) requires that:

> When a television broadcast station transmits *any matter* for which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, such station, the station shall broadcast an announcement that *such matter is sponsored, paid for, or furnished*, either in whole or in part, and by whom or on whose behalf such consideration was supplied * * * (Emphasis added).

Broadcasting Corp., 9 FCC 2d 227, 10 RR 2d 921, application for mitigation denied, 10 FCC 2d 558, 11 RR 2d 680 (1967); *Public Notice*, "Sponsorship Identification—Political Broadcasts," October 2, 1970, (Mimeo No. 55137); *Public Notice*, "Sponsorship Identification of Political Broadcasts Clarified," October 6, 1970 (Mimeo No. 55256). It is clear, then, that mere passing use of words which correspond to the sponsoring entity's title during the course of the message is insufficient in itself to constitute a proper sponsorship identification announcement and that at least two separate factual bases are present here which conclusively show Minshall's failure to comply with the sponsorship identification requirements: (1) at no time was an announcement made at the time of broadcast disclosing that the message was paid for, sponsored, or furnished; and (2) the identity of the sponsoring group was not made in terms specific enough to notify the station's audience of the message's sponsor, i.e., the references in the message were alternatively identified as "A group of concerned citizens" and "The concerned citizens", thus raising questions, as in *KOOL–TV*, and *Southwestern*, *supra*, regarding the sponsor's specific identity. Moreover, Minshall's contention that example 33 of *Applicability of Sponsorship Identification Rules*, *supra*, at 150, definitively exempts controversial issue messages from the requirement that the fact of sponsorship be announced at the time of broadcast amounts to a clearly erroneous reading of that Commission interpretation.[5] Nothing in that example exempts licensees from broadcasting an announcement, otherwise required by the Act and the Rules, indicating that the sponsored controversial issues message was sponsored or paid for. Indeed, the clear message of the Commission's statement there, particularly in light of the express requirements of the Act, the Commission's Rules, and the Commission's innumerable statements on the subject of the sponsorship identification provisions, directs licensees broadcasting such sponsored matter to disclose that the matter broadcast was paid for or sponsored. Whether the required announcement is made by visual or aural methods is, of course, a matter for a TV licensee's judgment. *Bert Combs*, 40 FCC 39 (1959). What is not left to the licensee's discretion, however, is the obligation to clearly and with specificity announce the identity of the sponsor and the fact that the message was so sponsored, paid for or furnished. Minshall, without question, wholly failed to meet this obligation.

9. Both Minshall and its counsel argue alternatively that even if a "technical violation of the rules occurred," an order of forfeiture is unenforceable since Minshall's failure to comply with the sponsorship identification requirements was inadvertent. More specifically, Minshall

[5] Example 33 states:

A station carries an announcement (or program) on behalf of a candidate for public office or on behalf of the proponents or opponents of a bond issue (or any other public controversial issue). At the conclusion thereof, the station broadcasts a "disclaimer" or states that "the preceding was a paid political announcement." Such announcements per se do not demonstrate compliance with the sponsorship identification rules. The rules do not provide that either of the above-mentioned types of announcements must be made, but they do provide in such situations that an identification be broadcast which will fully and fairly disclose the true identity of the person or persons by whom or on whose behalf payment was made * * *. If the sponsor is a corporation, committee, association or other group, the required announcement shall contain the name of such group * * *.

contends that prior to the broadcast of the challenged messages, Minshall and counsel communicated regarding the sponsorship identification requirements; that a misunderstanding developed during that conversation; that the misunderstanding resulted in a "mistake of fact" based upon the meaning of "disclaimer"; and that this "mistake of fact" culminated in the absence of the appropriate sponsorship identification announcement at the time of the challenged broadcasts. Minshall contends, therefore, that it should not be determined liable for its failure to comply with the sponsorship identification requirements because the failure to comply was "inadvertent", not willful, and because licensee's efforts to comply with the requirements were made in good faith. In support thereof, Minshall refers the Commission to the judicial decision in *United States* v. *Hubbard Broadcasting, Inc.*, 249 F. Supp. 936, 6 RR 2d 2069 (D.C. Minn. 1966), wherein the court refused to enforce a Commission order of forfeiture, based in part upon that court's finding that the violations of the sponsorship identification requirements was not willful since such violations were premised upon an "accidental inadvertence, due to a good faith mistake of fact . . . [and not] due to any culpable disregard of its duties." 6 RR at 2071. Insofar as Minshall seeks support for its denial of liability here, *Hubbard* is inapposite and factually distinguishable since the violations here were "repeated" within the ambit of Section 503(b)(1)(B), occurring twenty-six times on four separate days. When the facts disclose that the violations are repeated, the elements of intent, willfulness, or gross negligence need not be established for a valid forfeiture order to issue. *Friendly Broadcasting Co.*, FCC 62–670, 23 RR 893 (1962); *KOKE Inc.*, 23 FCC 2d 191, 18 RR 2d 408 (1970); *McClendon Pacific Corp.*, 5 FCC 2d 853, 8 RR 2d 1187 (1966). The fact that Minshall acted upon counsel's advice, which advice resulted from the so-called "mistake of fact", is likewise not germane to resolving (1) whether Minshall committed violations of the Act and the Rules, or (2) alternatively, whether the violations here were "repeated" within the contemplation of Section 503(b)(1)(B) of the Act, since responsibility for compliance with the Act and the Rules at all times devolves upon the licensee alone. *WGOK Inc.*, 2 FCC 2d at 246, 6 RR 2d at 443 (1965), cited with approval *Continental Broadcasting, Inc.*, 15 FCC 2d at 228–9, 14 RR 2d at 920–1 (1968). Even if the violations here were based upon a misunderstanding of the law, Minshall cannot be absolved from liability for forfeiture since licensees are expected to be responsive to the mandates imposed by the Act and the Rules, and to act accordingly. *Empire Broadcasting Co.*, 25 FCC 2d at 69, 19 RR 2d at 1192 (1970); *Williamson Broadcasting Corp.*, 3 FCC 2d 968, 7 RR 2d 701 (1966). Similarly, whether violations are inadvertent or are premised on a "mistake of fact" may become relevant only when the willfulness of the violations is considered. When violations are repeated, as here, inadvertence has no bearing on the lawfulness of a forfeiture order. *Paul A. Stewart Enterprises*, FCC 63–491, 25 RR 375 (1963).

10. Finally, Minshall alleges that, in the terms stated in its March 7, 1973, Notice of Apparent Liability, the Commission misconstrued certain factual and legal propositions posited by Minshall in its response

to the Commission's letter of inquiry prior to the issuance of the Notice. Minshall urges, therefore, that this misconstruction of its position negated the due process safeguards inherent in Section 503(b)(2) of the Communications Act.[6] That section of the Act provides in pertinent part that:

A notice (of apparent liability) * * * shall not be valid unless it sets forth the date, facts and nature of the act or omission with which the licensee or permittee is charged and specifically identifies the particular provision or provisions of the law, rule, or regulation * * *.

Licensee draws upon three fairly lengthy segments of the Notice to indicate the Commission's noncompliance with this statutory mandate, reasoning that each segment improperly characterized its response to the Commission's inquiry and thereby constituted a denial of due process to the licensee. This position is without merit, both factually and as a matter of law. The Commission's characterization of licensee's factual and legal arguments in the Notice accurately stated Minshall's position, and as represented in the Notice, clearly did not deviate from or distort the thrust of its defenses. Moreover, the Notice fully and comprehensively appraised licensee of the facts which formed the basis of the apparent violations, discussed in detail those applicable substantive provisions of the Act, the Rules, and the pertinent Commission precedents, and set forth an interpretation of the sponsorship identification requirements. If anything, the Notice provided Minshall with a truly adversarial perspective from which it could formulate and compose an adequate defense to the apparent liability asserted against it. Absent a specific licensee showing that the Commission in its Notice substantially failed to state, or significantly distorted, the relevant facts, dates of the apparent violations' occurrence, the nature of the act or omission being asserted, and the applicable provisions of law forming the basis of liability, it cannot be said that the Commission did not comply with the requirements specified in Section 503(b)(2). While licensee's response to the Commission's inquiry prior to the Notice's issuance revealed a dispute over interpretation and application of the sponsorship identification requirements, i.e., what constituted an appropriate sponsorship identification announcement under the circumstances, there was then, and is now, no dispute over the facts germane to an adjudication.

11. The messages challenged herein were broadcast twenty-six times during the period from December 1 through December 4, 1972. That the messages were broadcast without an appropriate sponsorship identification announcement twenty-six times on four separate days establishes that the violations were "repeated" as Section 503(b)(1)(B) employs that term as a condition for forfeiture liability. *Southwestern Broadcasting Co.*, 9 FCC 2d at 225–6; *Storer Broadcasting Co.*, FCC 62–694, 23 RR 906a (1962); *Harrisburg Broadcasting Corp.*, 5 FCC 2d 77, 8 RR 2d 777 (1966).

12. In view of the foregoing, IT IS ORDERED, That Minshall Broadcasting Company, Inc., licensee of WCJB–TV, Gainesville,

[6] 47 U.S.C. 503(b)(2).

Florida, FORFEIT to the United States the sum of one thousand dollars ($1,000) for its repeated failure to observe Section 317(a)(1) of the Communications Act of 1934, as amended, and Sections 73.654(a) and 73.654(g) of the Commission's Rules and Regulations. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Federal Communications Commission. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within thirty (30) days of the date of receipt of this Memorandum Opinion and Order.

13. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail-Return Receipt Requested to Minshall Broadcasting Company, Inc., licensee of WCJB–TV, Gainsville, Florida.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-900

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re request by
NORTH CAROLINA UTILITIES COMMISSION, RALEIGH, N.C.
For Oral Argument

SEPTEMBER 6, 1973.

NORTH CAROLINA UTILITIES COMMISSION, *P.O. Box 991, Raleigh, N.C. 27602.*

GENTLEMEN: This refers to your request for oral argument upon the question of our jurisdiction to grant the relief sought in a joint petition filed with this Commission on August 8, 1973 by Telerent Leasing Corporation of Raleigh, North Carolina, North American Telephone Association and others.

We have, today, designated the matter for oral argument before the full Commission as you had requested. A copy of our designation order is enclosed.

You further had requested authorization to participate in this proceeding for the limited purpose of contesting our jurisdiction to grant the specific relief sought in the said joint petition. The Commission welcomes your participation in this connection, as well as any views which you may wish to express on any of the matters which we have set for oral argument. We fully concur with your view that substantial jurisdictional questions are raised by the full relief sought in the petition for declaratory rulings before us. Accordingly, we will give high priority to this matter and will endeavor to resolve such questions expeditiously.

In view of the foregoing, it would seem appropriate that further action in your pending rulemaking proceeding concerning proposed Rule R9-5 be held in abeyance pending our decision in the formal proceeding we have today instituted.

We appreciate your interest in this important matter.

BY DIRECTION OF THE COMMISSION,[1]
VINCENT J. MULLINS, *Acting Secretary.*

[1] Commissioner Robert E. Lee absent.

F.C.C. 73-1124

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of ONONDAGA VIDEO, INC., ONONDAGA, N.Y. For Certificate of Compliance	CAC-411 NY368

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 31, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On May 15, 1972, Onondaga Video, Inc., filed the above-captioned application for certificate of compliance in which it proposes to operate a new cable television system at Onondaga, New York, located within the Syracuse, New York television market (#35).[1] Onondaga Video proposes to carry the following television broadcast signals:

WSYR-TV (NBC, Channel 3), Syracuse, New York
WHEN-TV (CBS, Channel 5), Syracuse, New York
WNYS-TV (ABC, Channel 9), Syracuse, New York
WCNY-TV (Educ., Channel 24), Syracuse, New York
WPIX (Ind., Channel 11), New York, New York
WOR-TV (Ind., Channel 9), New York, New York
WUTV (Ind., Channel 29), Buffalo, New York

The application is opposed by Onondaga UHF TV, Inc., permittee of Station WONH-TV, Syracuse, New York and Onondaga Video has replied.

2. In its opposition Onondaga UHF argues: (a) that Onondaga Video should not be allowed to carry the New York independent signals on its system, citing the Hearing Examiner's Initial Decision in *General Electric Cablevision Corporation*, et al., FCC 68 D-32, 12 RR 2d 1171 (1968). Onondaga UHF maintains that the Examiner determined that the importation of distant signals into the Syracuse market would result in undesirable economic impact on local stations;[2] and (b) that, alternatively, if carriage of New York independent signals is permitted, one of these signals should be deleted as soon as WONH-TV becomes available. In support, Onondaga UHF alleges that it was the Commission's intention to permit the carriage of a maximum of three independent television stations in the Syracuse market. Consequently, since it has completed the majority of its

[1] Onondaga has a population of 15,500. The proposed cable system will have 20-channel capacity. Of these channels, seven are to be used for television broadcast signal carriage and three for access cablecasting.

[2] The decision was appealed to the Review Board, which held consideration of the matter in abeyance pending the outcome of the Commission's *Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 18397*, 15 FCC 2d 417 (1968). On August 10, 1972, the Review Board terminated the hearing without a final decision.

construction, Onondaga UHF should be given more consideration than a newly granted permittee and be allowed to replace one of the New York independents as soon as it becomes operational.

3. We reject Onondaga UHF's objections. (a) The Examiner's initial decision in the *General Electric* matter did not establish cable impact in the Syracuse market. Under the rule existing at the time (Section 74.1107), the burden rested on the cable television system to rebut a presumption that the importation of distant signals would have a deleterious effect on local television stations and the Examiner found that the cable television systems had not succeeded in overcoming the presumption. The fact that this proceeding was never completed severely limits the weight that can be given to this finding. And under the present cable rules, the burden rests on the objecting television station (not the cable system) to prove with specific financial data that there is a need for remedial action. Paras. 71–72 *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 169. Onondaga UHF has not submitted such financial evidence or otherwise persuaded us to accept its contention. See *Spectrum Cable Systems, Inc.*, FCC 73–257, 40 FCC 2d 1019. (b) Onondaga UHF was initially granted a construction permit for Station WONH–TV in February, 1967; however, WONH–TV has not yet commenced operations. For purposes of the cable carriage rules, a station that is authorized but not operating is required to be included in a carriage complement for 18 months after the initial grant of its construction permit (Section 76.61(b)). After that, a cable system may carry other signals authorized by Section 76.61(b) and (c) of the Rules. Therefore, since Onondaga UHF has exceeded the 18-month period, Onondaga Video's proposed carriage of three distant independent television signals is consistent with the Rules. Furthermore, as we noted in paragraph 77 of the *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 172: "The emergence of new stations will not require displacement of existing signals because that would cause disruption of service to the public". Nevertheless, we believe that the public interest would be served by limiting the number of distant independent signals to be carried to two, if WONH–TV is on the air when the cable system commences operations. A certificate of compliance will be issued when the Commission is advised of which two distant independent stations will be carried in the event that WONH–TV is on the air within the time specified. This certificate will also include authorization to carry WONH–TV, whenever it actually goes on the air.[3]

4. Onondaga Video proposes to operate under a franchise granted by the Town of Onondaga on March 3, 1965. The franchise contains no statement to establish that there was a public proceeding prior to the franchise award, nor is there a statement indicating an intent to complete significant construction within the first year after certification and to extend energized trunk cable to all parts of the community. How-

[3] On September 19, 1973, WONH–TV received an extension of time to March 19, 1974, to complete construction of its facilities. WONH–TV is entitled to carriage, pursuant to Section 76.61(a) of the Rules. This carriage will be in addition to the three independent signals for which certification has been expressly sought herein, if WONH–TV goes on the air after the system commences operations.

ever, in April 1972, Onondaga Video submitted statements to the franchising authority, in which it described its construction schedule and financial structure. In addition, its franchise was published in local newspapers. Since the franchise was granted prior to March 31, 1972, only substantial consistency with the franchise provisions of Section 76.31 of the Rules need be demonstrated at this time, according to the note to Section 76.13(a) (4). We find the deviations described above to be relatively minor, and therefore find substantial consistency sufficient to grant the application until March 31, 1977. *E.g., Theta Cable of California*, FCC 73-826, —— FCC 2d ——.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Applications For Certificates of Compliance" filed June 13, 1972, by Onondaga UHF, Inc., IS GRANTED to the extent indicated in Paragraph 3 above.

IT IS FURTHER ORDERED, That the application (CAC-411) filed by Onondaga Video, Inc., IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1140

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re:	
ORANGE CABLEVISION, INC., ORLANDO, WINTER PARK, APOPKA, BELLE ISLE, WINDERMERE, AND MAITLAND, FLA.	CSC-54 (FL181) CSC-55 (FL189) CSC-56 (FL192) CSC-57 (FL195) CSC-58 (FL193)
SEMINOLE CABLEVISION, INC., SANFORD, WINTER SPRINGS, AND CASSELBURRY, FLA.	CSC-59 (FL194)
AMERICAN TELEVISION AND COMMUNICATIONS CORP., KISSIMMEE, FLA.	CSC-60 (FL188) CSC-61 (FL190)
Requests for Orders To Show Cause	CSC-62 (FL191) CSC-63 (FL223)

MEMORANDUM OPINION AND ORDER

(Adopted October 31, 1973; Released November 5, 1973)

BY THE COMMISSION: COMMISSIONERS REID AND WILEY CONCURRING IN THE RESULT.

1. On June 15, 1973, the Outlet Company, licensee of Station WDBO-TV (CBS), Orlando, Florida, filed a letter requesting that the Commission issue Orders to Show Cause against Orange Cablevision, Inc., Seminole Cablevision, Inc., and American Television and Communications Corporation, operators of cable television systems at the above-captioned communities for alleged unauthorized signal carriage in violation of the certificate requirement of Section 76.11(a) of the Commission's Rules. On July 5, 1973, respondents, Orange, Seminole, and ATC, filed "Replies," and on July 9, 1973, Outlet filed a further letter.

2. Orange and Seminole operate forty channel cable television systems while ATC operates a twelve channel cable television system at Kissimmee, Florida. Orange and Seminole are currently authorized to carry the following signals:

WESH-TV, NBC, Daytona Beach, Florida
WDBO-TV, CBS, Orlando, Florida
WFTV, ABC, Orlando, Florida
WMFE-TV, Educ., Orlando, Florida
WEDU, Educ., Tampa, Florida
WUSF-TV, Educ., Tampa, Florida
WUFT, Educ., Gainesville, Florida
WCIX-TV, Ind., Miami, Florida
WLTV, Ind., Miami, Florida
WTOG, Ind., St. Petersburg, Florida
WSWB-TV, Ind., Orlando, Florida

ATC is currently authorized to carry all of the above signals except WUSF-TV.

3. As required, respondents carry WDBO–TV on a full-time basis and afford it exclusivity. They are not authorized, however, to carry Television Broadcast Station WTVT (CBS), Tampa, Florida.[1] Nevertheless, they carry WTVT's 7 p.m. broadcast of the 7 p.m. network feed of the *CBS Evening News*. Respondents contend that Section 76.61(e)(2) of the Rules permits them to carry WTVT's 7 p.m. broadcast of the *CBS Evening News* even though WDBO–TV broadcasts the 6:30 p.m. network feed of program.[2] They argue that occasional changes in the content of the second network feed make it a network program not otherwise available to their subscribers. We reject respondents' argument.

4. At times, there are substantive differences between the 6:30 p.m. and the 7 p.m. feed of the *CBS Evening News*. These differences, however, are infrequent. In Paragraph 19 of the *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326 (1972), we made it clear that Section 76.61(e)(2) was intended to give cable television subscribers access to network programming which was not cleared by affiliates. If we were to hold that different feeds of the *CBS Evening News* were separate programs, we would go beyond the additional carriage contemplated by Section 76.61(e)(2). Accordingly, we find that respondents are in violation of Section 76.11's certification requirement in carrying WTVT's broadcast of the *CBS Evening News* without obtaining prior Commission authorization.

The considerations which prompt us to issue a *Notice of Proposed Rulemaking in Docket No. 19859* today, however, also compel us to find that, although respondents are in violation of the Rules, it is not in the public interest to issue the requested Order to Show Cause. *C. J. Community Services* v. *Federal Communications Commission*, 246 F. 2d 660 (D.C. Cir. 1967).

Accordingly, IT IS ORDERED, That the requests for an Order to Show Cause filed June 15, 1973, by the Outlet Company, Orlando, Florida, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[1] Orange Cablevision, Inc., has applied for a Certificate of Compliance to carry the signal of Television Broadcast Station WTVT on a temporary basis throughout the broadcast day (CAC–2459). We now rule on respondents' carriage of WTVT's 7 p.m. broadcast of the *CBS Evening News* and do not pass on the merits of Orange Cablevision's application for a Certificate of Compliance.

[2] Section 76.61(e)(2) of the Rules provides that:

(e) In addition to the television broadcast signals carried pursuant to paragraphs (a) through (d) of this section, any such cable television system may carry:

(2) Any television station broadcasting a network program that will not be carried by a station normally carried on the system. Carriage of such additional stations shall be only for the duration of the network programs not otherwise available, and shall not require prior Commission notification or approval in the certification process.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re complaint by
JOSEPH A. GILLIS AND PHILIP A. GILLIS
Concerning Personal Attack re Kaiser Broadcasting Corp., Station WKBD-TV, Southfield, Mich.

OCTOBER 29, 1973.

KAISER BROADCASTING CORP., *Licensee of Station WKBD-TV, Box 359, Southfield Mich. 48075.*

GENTLEMEN: This is in reference to the complaint of Joseph A. Gillis and Philip A. Gillis against station WKBD-TV, Detroit, Michigan, in which they allege that your station violated the Commission's personal attack rule.

In correspondence dated August 21, December 7, and December 13, 1972 Philip A. Gillis stated that on the August 6, 1972 "Lou Gordon Program" Mr. Gordon made an attack against complainants' honesty, character and integrity; that the attack occurred during an interview with Mr. Loglin T. Hayes; that the subject Mr. Hayes discussed was whether in the next Detroit election voters should vote to add seven judges to Detroit's Recorders Criminal Court; that the subject of the interview was a controversial issue of public importance in the Detroit area at the time of the broadcast; that Mr. Gordon alleged that the complainants were involved in illegal activities concerning the Dr. Louis Spalter case; that the "Lou Gordon Program" is not a bona fide newscast, bona fide news interview, or on-the-spot coverage of a bona fide news event, and therefore is not exempt from the Commission's personal attack rule; and that the station failed to comply with Section 73.679 of the Commission's Rules and Regulations in that it failed to notify complainants of the attack, send them a tape, transcript or accurate summary of the attack, and offer them a reasonable opportunity to reply within seven days of the attack.

Complainants included in their correspondence the following excerpt from the August 6, 1972 "Lou Gordon Program" which contains the alleged personal attack:

GORDON: * * * Let me tell our viewers, if I may, why I think Judge Gillis chose not to be here, and that's anybody's privilege, except you don't tell people three times you want to be here, you want this program to be aired before the election, not show up and then when you're called, somebody tells us that you're on vacation for two weeks. I mentioned many times on this program the role of Judge Joseph Gillis in connection with the case of Dr. Louis Spalter, a convicted

abortionist. Dr. Spalter was convicted as a result of an indictment handed down by the Piggins Grand Jury. Dr. Spalter appealed that case, was out on bond pending appeal, vacationing in Florida. Quite surreptitiously, in the minds of many, Dr. Spalter reappeared in town, his lawyer was State Senator George Fitzgerald, the Democratic leader in the Senate; he was brought before the one and only same Judge Joseph Gillis, Jr.; he was given probation, which means he was free despite the fact he was convicted as an abortionist. He dropped his appeal. Later, Judge Joseph Gillis' brother, Philip, wound up representing Dr. Spalter, when Dr. Spalter was brought before the Wayne County Grand Jury recently, on a question of whether he had paid off police officers to permit his abortion racket to continue. Judge Spalter cho—or Mr. Spalter, Dr. Spalter, chose going to jail for contempt of court rather than telling the Wayne County Grand Jury who he had paid off, how much, and when. In other words, rather than speaking up, he chose to go to jail, and he did go to the Detroit House of Correction. Now I'd mentioned this on the air several times about Judge Gillis. I've invited him to appear to respond to that. Apparently, maybe, at the last moment, he remembered that, and decided he would prefer not to appear. Mr. Hayes, we've run out of time. I think we've about covered it, unless you have anything you want to add.

In response to a commission inquiry, the licensee, in a letter dated June 4, 1973, stated that the "Lou Gordon Program" is a bona fide news interview show exempt from the personal attack rule; that the Broadcast Bureau has ruled on two occasions that the "Lou Gordon Program" is a bona fide news interview show for the purposes of Section 315 and the personal attack rule; [1] that the remarks made by Mr. Gordon on his August 6 program did not constitute an attack either on Judge Gillis or Philip Gillis within the meaning of the personal attack rule; that Mr. Gordon's remarks about complainants were not made during the presentation of views on a controversial issue of public importance and in any event they did not constitute an attack on the "honesty, character, integrity, or like personal qualities" of complainants; and "that the station nonetheless made every effort to satisfy the Gillises' complaint and to provide them with a reasonable opportunity to respond to Mr. Gordon."

In correspondence dated June 6, 1973, Philip Gillis states that he recently received new information that the portion of the interview with Mr. Hayes that commences, "Let me tell our viewers * * *" and which ends "Apparently, maybe, at the last moment, he remembered that, and decided he would prefer not to appear," did not occur during the interview, but was read by Mr. Gordon at some other time and inserted in the program to make it appear that the remarks were directed to Mr. Hayes.

The licensee in reply to Philip Gillis' June 6 letter states that Mr. Gillis did not provide a foundation for his allegation; that certain other remarks made about complainants were taped at some other time and inserted into the August 6 show; that the station did shorten the interview through editing; that Mr. Hayes does not recall the re-

[1] *Don Lobsinger*, 26 FCC 2d 230 (1969); *Anthony Getto*, 26 FCC 2d 351, 352 (1970).

104-015—73——7

marks concerning complainants being made by Mr. Gordon during the taping of the interview, but that Mr. Gordon and Mr. Robert Woodruff, executive producer of the program, are certain that the remarks concerning the complainants were made during the interview; that the station employees involved in preparing the "Lou Gordon Program" did not recall inserting the remarks concerning the complainants; that it is against station policy to insert extraneous material into a broadcast interview; that the videotape for the program was reused and is unavailable; that a further review of the audio tape did show that Mr. Gordon did tape certain remarks which were inserted into the program for broadcast at the conclusion of his interview with Mr. Hayes; that these remarks were introduced with a statement that they had been taped separately from the Hayes interview; that the remarks were not the ones complainants referred to in their correspondence but rather presented Mr. Gordon's views in favor of increasing the number of Judges on the Recorders Court; and that the interview with Mr. Hayes was taped on Sunday, July 30, a week before its broadcast, not on August 4 as had previously been reported.

The personal attack rule is embodied within Section 73.679 of the Commission's Rules and Regulations and states that when during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack transmit to the person or group attacked: (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities. The mere mention of a person or group, or even certain types of unfavorable references thereto, do not constitute personal attacks as defined by the Commission; and bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events are exempt from the personal attack rule.

The threshold issue in this case is whether the "Lou Gordon Program" is a bona fide news interview program and thus exempt from the application of the personal attack rule. Complainants contend that the "Lou Gordon Program" should not be classified as a bona fide newscast, bona fide news interview, or on-the-spot coverage of a bona fide news event for the purposes of Section 73.679. Complainants state that the program begins with approximately a twenty minute question and answer period in which Mrs. Gordon asks Mr. Gordon questions allegedly phoned in by television viewers during the previous weeks' programs; that Mr. Gordon uses this opportunity to present his views on news events which have already been reported in the news media from several days to several months prior to the broadcast; that the balance of the program consists of interviews; that "Mr. Gordon usually will interview someone who has a book to sell, a product to plug or an axe to grind" and that "During the course of the interview, usually towards the end, Mr. Gordon will ignore the guest in favor of the camera, to rake a little muck." The licensee, in reply to complainants

states that the past rulings of the Broadcast Bureau are correct in classifying the "Lou Gordon Program" as a bona fide interview show exempt from the personal attack rule. In support of this contention, the licensee states that the program is broadcast each Saturday and Sunday evening during prime time and has been regularly scheduled on its station since 1967; that a large number of important national political and governmental leaders including Senators George McGovern, Jacob Javits and Robert Griffin have appeared on the program; that a "bulk" of Mr. Gordon's guests are interviewed on subjects involving government and politics; that the interviews are typically taped at the licensee's studio on Friday and Sunday of each week and the Friday's show is usually broadcast on the immediately following Saturday or Sunday and the show taped on Sunday is usually broadcast that night or the following Saturday; that occasionally an interview will be held for future broadcast where time is not of the essence; that the station is closely involved in the selection of guests; that the program usually lasts 90 minutes and consists of two or more interviews by Mr. Gordon of newsworthy figures and a question and answer period typically about 20 minutes in length; and that some of the questions used on the show relate to matters discussed in previous interviews, while others call for Mr. Gordon's comments on various issues of the day.

The Broadcast Bureau has issued two rulings concerning the "Lou Gordon Program." See Footnote 1, *supra.* The first ruling, issued on September 8, 1969, held that the "Lou Gordon Program" did not advocate or endorse Sheriff Gribbs' candidacy for Mayor of Detroit and that the program is a regularly scheduled bona fide news interview and therefore is exempt from the "equal time" obligation of Section 315. *Don Lobsinger, supra.* The Broadcast Bureau's second ruling, *Anthony Getto, supra,* issued November 3, 1970, held that the "Lou Gordon Program" was exempt from the Commission's personal attack rules because it was a bona fide news interview program. The *Getto* ruling was based on the findings of the *Lobsinger* ruling that the program is a regularly scheduled bona fide news interview show. That ruling was based on representations made to the Commission by the licensee in correspondence dated August 11, 1969; the complainant did not refute any of the claims made by licensee concerning the bona fide news interview status of the program; and the Bureau saw no necessity in probing further into the licensee's statements absent a challenge by complainant. Complainants in neither the *Lobsinger* nor *Getto* rulings appealed to the full Commission. In this case, complainants have challenged our initial and subsequent conclusion and presented sufficient information to warrant a reexamination of our earlier decisions.

The licensee submitted, at the request of the Bureau, tape recordings of the "Lou Gordon Program" broadcast by the licensee during the month of April 1973; a list of the guests who had been interviewed on the "Low Gordon Program" during the past year (May 1, 1972–April 30, 1973), and the general topic of the interviews.

A review of the material reveals that the "Lou Gordon Program" is usually divided into two segments. The first segment of the show

consists of a question and answer period. Mrs. Gordon asks her husband selected questions submitted by viewers previous to the taping of the show. The second segment consists of interviews between Mr. Gordon and one or more guests. The guests include government officials, newsmakers, sport celebrities, entertainers, authors and other categories of guests. Mr. Gordon uses both segments to present his personal opinions upon the subjects being discussed. It should be noted that while Mr. Gordon does have interviews with important current news personalities, he also has a large number of interviews with entertainment personalities, sports celebrities and other varieties of guests.[2]

The Commission has exempted bona fide news interview programs from the personal attack rule. In a 1968 Memorandum Opinion and Order, the Commission stated: "We are expanding the exemptions * * * [of the personal attack rules] * * * to include the bona fide news interview and news commentary or analysis in a bona fide newscast * * * The bona fide news interview is similarly a means of developing the news and informing the public which the Congress singled out in the 1959 amendments * * * [to Section 315]." *Amendment of Part 73 of the Rules*, 12 FCC 2d 250, 252 (1968).

Both Section 315 of the Communications Act of 1934, as amended, and the Commission's personal attack rule (Sections 73.123 and 73.679) exempt bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event from the application of their provisions.[3] A footnote in the *Amendment of Part 73 of the Rules*, *ibid* at page 252, states that the exemptions to the personal attack rule, including the bona fide news interview, shall be defined and interpreted in the same manner as the exemptions to Section 315. Thus it is necessary in determining whether the "Lou Gordan Program" should be classified as a bona fide news interview to examine the type of programs exempted as bona fide news interviews under Section 315.

The Commission in *WMCA, Inc.*, 40 FCC 367 (1962), stated:

> The Congress, in debating the 1959 amendments to Section 315 of the Communications Act, cited certain specific examples of programs which would be exempt as bona fide news interview programs (see e.g., 105 Cong. Rec. 16344 (1959)) and, it is from these examples that the definition of a bona fide news interview must be derived. Cf. *CBS, Inc.* v. *Amana Refrigeration*, 295 F. 2d 378.

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[2] The following is a partial list of guests who appeared on the "Lou Gordon Program" from May 6, 1972 to May 1, 1973 and who could be classified as sport celebrities, entertainers, authors, or within miscellaneous categories rather than classified as current news personalities, government officials, or newsmakers: George Blanda (football player)—May 6, 1972; Sidney Poitier and Harry Belafonte (actors)—May 7, 1972; Sybil Leek (self-styled witch) and Daniel Logan (author)—May 13, 1972; Xaviera Hollander (prostitute and author)—May 14, 1972; Dovima (fashion model)—May 20, 1972; Irving Wallace (author)—June 3, 1972; Henry Rucker (psychic)—June 11, 1972; Rudy Vallee (entertainer)—June 18, 1972; Denise Darcell (entertainer)—June 24, 1972; Liz Renay (show girl)—July 1, 1972; Connie McConnahie (lesbian)—July 15, 1972; Dick the Bruiser (wrestler)—July 16, 1972; Bill Nagler (magician)—August 5, 1972; Lawrence Welk (orchestra leader)—August 20, 1972; Karl Wallenda (aerialist)—September 24, 1972; Victor Buono (actor)—October 1, 1972; Graham Kerr (chef)—November 11, 1972; Rod McKuen (poet-author)—November 11, 1972; Lisa Worthington (psychic)—December 2, 1972; Jay Carr (drama critic)—January 7, 1973; Georgia Sothern (Burlesque Queen)—January 21, 1973; Sandi Enders (sexual therapist)—January 21, 1973; Jack Baker and Michael McConnell (homosexuals)—March 4, 1973; Dr. Robert Atkins (diet Doctor)—March 11, 1973; Maharishi Mahesh Yogi (Guru)—March 25, 1973; Erich Segal (author)—April 1, 1973; Tempest Storm (burlesque queen)—April 7, 1973; Charlton Heston (actor)—April 15, 1973; Barbara Howar (author)—April 29, 1973.

[3] Section 315 also exempts bona fide news documentaries. See 47 U.S.C. 315.

"Meet the Press," "Face the Nation" and "Youth Wants to Know", are all specifically mentioned in the legislative history.

The "Lou Gordon Program" consists of a melange of news interviews along with comments by Mr. Gordon and interviews of entertainment personalities, authors and sports celebrities. This program is not the type Congress intended to exempt from Section 315 or which the Commission intended to exempt from the personal attack rule, since it does not deal solely, or even predominantly with news matters. The fact that the moderator continuously interjects his own personal opinions additionally takes it out of the category of a "Meet the Press" or "Face the Nation" format. Thus, on the basis of the new information before us, we hold that the "Lou Gordon Program" is not a bona fide news interview program exempt from Section 315 and the personal attack rules.

Complainants contend that they were personally attacked on the August 6, 1972 "Lou Gordon Program." Specifically, petitioners contend that Mr. Gordon's comments and unfavorable innuendoes against both Judge Gillis and Philip Gillis constituted an attack on their character and integrity. A review of the words used in reference to petitioners shows no attack on the honesty, character and integrity of either Judge Gillis or Philip Gillis within the meaning of the personal attack rule. Mr. Gordon did not allege that either Judge Gillis or Philip Gillis violated any law or took part in any illegal activity in their roles as Judge and attorney. See *Reverend Paul Driscoll*, 40 FCC 2d 448 (1973). However, the passage cited by complainants contains a clear personal attack against Dr. Louis Spalter. In the transcripted passage Mr. Gordon states that Dr. Spalter is a convicted abortionist; that "he had paid off police officers to permit his abortion racket to continue"; and that Dr. Spalter "chose going to jail for contempt of court rather than telling the Wayne County Grand Jury who he paid off, how much and when." This is an attack on the honesty, character and integrity of Dr. Spalter. However, because the Broadcast Bureau had previously ruled that the "Lou Gordon Program" was exempt from the personal attack rule, no further action is warranted in this case.[4] Since we have now concluded that the "Lou Gordon Program" is not exempt under Section 315 or the Commission's personal attack rule, the licensee will be expected to comply with the obligations of these provisions in the future.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

[4] Neither complainants nor Dr. Spalter complained of the reference to Dr. Spalter.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ALAN S. BURSTEIN, SYRACUSE, N.Y.
Concerning Political Broadcasts by
Syracuse, N.Y., Stations

OCTOBER 19, 1973.

Airmail—Special Delivery
MR. ALAN S. BURSTEIN,
200 McCarthy Building,
Syracuse, N.Y. 13202.

DEAR MR. BURSTEIN: This is in reply to your letter of October 12, 1973 in which you allege that various television and radio stations in Syracuse, New York have broadcast false advertisements advocating the mayoral candidacy of Mr. Lee Alexander.

In your correspondence you state that you are representing John O'Connor, Republican candidate for mayor of the city of Syracuse in the November 6, 1973 election; that Mr. Alexander is the Democratic candidate and is presently the incumbent mayor of Syracuse; that an organization called Citizens for Good City Government has produced and paid for political advertisements advocating the candidacy of Mr. Alexander; that the theme of these ads is that Mr. Alexander is "one of the six best mayors in the United States"; that these advertisements are "false and calculatingly designed to deceive the voting public"; that Mr. Thomas Cummings, Chairman of the Citizens for Good City Government, admitted in recent newspaper articles that no individual group or organization "capable of making the judgment made such an assessment as to the purported national ranking of Mr. Alexander" and "the advertisement was a creature of his imagination or that of the organization which he chairs"; that various bumper stickers advocating Mr. Alexander also appear to be in violation of the election law; and that the Commission should investigate the unfair campaign practices of the Alexander campaign.

In an October 19, 1972 telephone conversation with Mr. Leonard Koldin, a representative of Mr. O'Connor's campaign committee, it was stated that Mr. Alexander's advertisements appeared on the following Syracuse stations: WSYR–TV; WHEN–TV; WNYS–TV; WSYR(AM); WFBL(AM); WNDR(AM); and WOLF(AM); that Mr. Alexander's campaign produced five advertisements for television and his picture appeared on all the advertisements but his voice appeared only on four; that Mr. Alexander's campaign also produced various radio spots and that most of those spots contained his voice; that the O'Connor campaign staff contacted WSYR–TV and WNYS–TV to complain about the Alexander ads but that the station after

reviewing the ads stated that they were going to continue to broadcast them.

Section 315 of the Communications Act of 1934, as amended, states that if a licensee permits any person who is a legally qualified candidate for any public office to use a broadcasting station, he must afford "equal opportunities" to all other such candidates for that office in the use of such broadcasting station. If a legally qualified candidate appears on a bona fide newscast, bona fide news interview, bona fide documentary or on-the-spot coverage of a bona fide news event such an appearance will not be deemed a use of a broadcasting station for the purposes of Section 315. Thus unless a candidate's appearance comes within an exempt category, a broadcast of his voice or picture will be deemed a use within the meaning of Section 315.

The issue in this case is whether the Commission has the power to prevent political advertisements which are alleged to be false from being broadcast over television and radio facilities licensed by the Federal Communications Commission. Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. 315, prohibits licensee censorship of broadcasts by legally qualified candidates for public office. It states in pertinent part that a "licensee shall have no power of censorship over the material broadcast under the provisions of this section."

In addition, Section 326 of the Act, 47 U.S.C., 326, prohibits the Commission from censoring broadcast matter or interfering with the right of free speech by means of radio communication. The Supreme Court in *Farmers Union* v. *WDAY*, 360 U.S. 525, has held that in view of the no-censorship provision of Section 315, licensees are immune to suit for defamatory statements contained in candidates' broadcasts, and has pointed out that permitting censorship for libel would "undermine the basic purpose for which Section 315 was passed—full and unrestricted discussion of political issues by legally qualified candidates." (360 U.S. at 529) *Mr. Lonnie King*, 36 FCC 2d 635 (1972).

It appears from the information before the Commission that Mr. Alexander's television advertisements constituted a "use" within the meaning of Section 315, in that his picture appeared on all five political spots and his voice was broadcast on four of those spots. Thus neither the Commission nor the licensee can censor any material contained within political spots which are deemed a "use" by Mr. Alexander.

Regarding the radio spots advocating the election of Mr. Alexander, the same principles apply. If Mr. Alexander's voice appears on any of the radio spots, neither the Commission nor the licensee can censor them.

The O'Connor campaign staff noted that some radio advertisements did not contain the voice of Mr. Alexander and thus were not "uses" within the meaning of Section 315. With respect to complaints which allege the broadcast of false information within political spots in which the candidate does not appear, the Commission in a staff letter to Mr. Patton Echols, dated October 16, 1973 stated:

In a letter to the Commission of October 27, 1973, the Honorable Ronald Reagan, Governor of California, asked the Commission with

respect to advertising in support of a ballot proposition, to remind licensees to "screen out all materials which are false and fraudulent * * *." In response, the Commission stated in part,

> Absent certain conditions not here present (e.g., appearance by political candidates) each licensee may exercise its own judgment as how best to serve the public interest by presenting contrasting views, and what particular material is to be presented. Intervention by the Commission regarding specific material being broadcast for or against a proposition, even to the limited degree you urge, might create the impression that the Commission is advocating one viewpoint or attempting to judge the truth or falsity of material being broadcast on either side of a currently controversial issue—a position which would be inappropriate for a governmental licensing agency. (*In Re Complaint by Hon. Ronald Reagan*, 38 FCC 2d 314 (1973).)

Although the complaint in that case was different from that here, the principal enunciated is applicable to both situations. Here, as in the earlier case, the Commission will not attempt to judge whether statements broadcast on political or other controversial public issues are true or false or whether a licensee was justified in either broadcasting or rejecting them. To do so would be to attempt to place the Commission itself, the government licensing agency, in the role of national arbiter of the "truth." Although we would be most concerned if substantial evidence were presented that a licensee had acted in bad faith or deliberately discriminated against a political candidate, we have no such evidence before us here.

Accordingly, for the reasons stated above, no further action by the Commission on your complaint appears appropriate.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief*,
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
VERNON L. HAMMED
Concerning political broadcast by Sound Media Corp., station WKIK, Leonardtown, Md.

OCTOBER 29, 1973.

Certified Mail—Return Receipt Requested
SOUND MEDIA CORP.,
Licensee of Radio Station WKIK,
Box 346,
Leonardtown, Md. 21610.

GENTLEMEN: This is with reference to your July 10, 1973 letter notifying the Commission "of an apparent mistake on our part concerning the Fairness Doctrine," and to the July 13, 1973 complaint against your station filed by Mr. Vernon L. Hammed.[1] In your July 10 letter, you state that on July 9, 1973 you broadcast an editorial endorsing a candidate in the July 10 Democratic primary election for Maryland's First Congressional District, but did not notify opposing candidates in advance of the broadcast. You further state that after consulting with legal counsel, you attempted, on July 9, to notify all Congressional candidates of the broadcast and offer each equal opportunities to reply. You enclosed with your July 10 letter copies of the editorial, prior invitations for candidates to use your facilities without charge, and your letter notifying the candidates of the editorial. You also stated you "have undertaken to study the fairness doctrine more closely so that something of this nature will not happen again."

In his July 13, letter, Mr. Hammed stated that on July 9 at 3:30 p.m. he received a telephone call from you advising him of the editorial and offering him equal opportunity to reply. He complains that you violated Section 73.123(c) of the Commission's Rules and Regulations, which provides:

Where a licensee, in an editorial, (1) endorses or (2) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial (a) notification of the date and the time of the

[1] The following pleadings were received:
(1) Licensee's letter notifying Commission of "apparent mistake"; received July 11, 1973.
(2) Complaint received July 16, 1973.
(3) Licensee's response to complaint, received July 18, 1973.
(4) Reply to response, received July 24, 1973.
(5) Licensee's response to the reply, received July 27, 1973.
(6) Licensee's further statement, received July 30, 1973.

editorial; (b) a script or tape of the editorial; and (c) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the licensee's facilities: *Provided, however*, That where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

In your July 16 response to the complaint you state, "Mr. Hammed was called, admittedly late, and given the opportunity to compose a reply." Your July 23 letter states Mr. Hammed "did receive equal time, with three rebuttals run on Monday, July 9, 1973 and two run the morning of July 10th." It appears, and you acknowledge by your correspondence, that you violated Section 73.123(c) of the Commission's Rules by broadcasting, within 72 hours of the day of an election, an editorial endorsing a legally qualified political candidate without notifying other candidates, "sufficiently far in advance of the broadcast," of the editorial and its contents, and their rights to reasonable opportunities to respond. As the Commission stated in *Personal Attacks; Political Editorializing*, 8 FCC 2d 721, 727 (1967):

For while such last-minute editorials are not prohibited, we wish to emphasize as strongly as possible that such editorials would be patently contrary to the public interest and the personal attack principle unless the licensee insures that the appropriate candidate (or candidates) is informed of the proposed broadcast and its contents sufficiently far in advance to have a reasonable opportunity to prepare a response and to have it presented in a timely fashion.

In your July 24 letter, you state that you "made an honest mistake, admitted it and corrected it as far as was humanly possible," and that you "have also undertaken to make sure it doesn't happen again." However, the Commission has stated that prompt corrective action, while salutary, does not excuse a violation of the Commission's Rules. "Licensees are expected to be familiar with Commission rules and to adhere thereto." *Executive Broadcasting Corporation*, 3 FCC 2d 699, 700 (1966). The fact that you brought the violation to the Commission's attention prior to the filing of a complaint does not relieve you of your responsibility for compliance with the political editorializing rule. In this sensitive area affecting the electoral process, the licensee's adherence to Commission Rules and Regulations is of paramount importance. As stated in *Golden West Broadcasters*, 8 FCC 2d 987, 989 (1967):

(W)here endorsements are broadcast in the closing hours of a political campaign, the licensee owes a special duty to affected candidates to comply scrupulously with its obligations.

Although the Commission has issued forfeitures for violations of this type, upon consideration of all the facts and circumstances of this case it is believed that a forfeiture is not warranted. However, this letter will be placed in the appropriate Commission file where it will be available for reference in connection with your overall performance as a licensee.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-1116

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTIONS 73.40, 73.49, 73.60, 73.63, 73.89, 73.113, 73.114, 73.252, 73.255, 73.283, 73.284, 73.295, 73.297, 73.317, 73.330, 73.331, 73.552, 73.555, 73.583, 73.584, 73.595, 73.596, 73.672, 73.687, 73.690, 73.692 and 73.693 OF THE RULES, Concerning Frequency Monitors and the Maintenance of the Operating Frequency of Stations	Docket No. 19712

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 30, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. A petition for reconsideration in this proceeding was filed on September 10, 1973, by J. G. Rountree.

2. A "Petition For Reconsideration By The National Association of Broadcasters In Support of Like Petition of J. G. Rountree, Consulting Engineer" was filed herein on September 14, 1973.

3. Both petitions seek reconsideration to the extent of increasing from 31 days to 40 days the maximum interval between successive measurements on carrier and subcarrier frequencies of broadcast stations.

4. The Commission's Report and Order of August 8, 1973 (FCC 73-861), in pertinent part, deleted the requirement of frequency monitors for AM and FM stations (the requirement was deleted from the TV rules in 1964). It also deleted the requirements concerning three-hour and daily frequency checks. The rules were amended to require that the carrier and subcarrier frequencies of broadcast stations be measured as often as necessary to ensure that the frequency is maintained within the prescribed tolerance, but in no event should the interval between successive measurements exceed 31 days.

5. Both petitioners urge that it would be desirable and beneficial to specify instead that such measurements be made once each calendar month with no more than 40 days expiring between successive measurements. In support thereof, they state that it is the practice among licensees and commercial measuring services, where monthly measurements are scheduled, to specify a certain day of the month for the making of measurements, e.g. the first Tuesday of each month, rather than a specific date. Thus, they say, there could be as much as five weeks between the measurements. Petitioners also state that interfer-

ence caused by numerous uncontrollable circumstances could necessitate rescheduling a frequency measurement to a subsequent day which might fall outside the 31 day interval.

6. No oppositions to the petitions were filed.

7. The Commission believes that there is merit to the petitioners' suggestion and that the public interest would be served by such modification of its rules.

8. It is noted that neither petitioner filed comments in this rule making proceeding.

9. Petitioner Rountree states that he did not file comments because he relied upon, and favored, wording of the provision as set out in the Notice of Proposed Rule Making. He claims that the wording as finally adopted was changed and that the change can cause the hardships to which he has referred. The change was from "However, in no event shall the interval between successive measurements be more than 1 month" to "However, in no event shall the interval between successive measurements exceed 31 days" (underscoring added). The change was made because "1 month" could be construed as varying from 28 to 31 days and the wording "31 days" gave certainty to the provision. Even as originally proposed, the wording would not have provided the flexibility which Rountree now urges, and the change is not the cause of the possible hardships as he contends. Thus, a substantial question is raised as to Rountree's reliance upon the original wording as good reason for not participating in the early stages of this proceeding as required by Section 1.106(b) of the rules concerning petitions for reconsideration.[1] NAB makes no showing as to why it did not participate earlier, except for its support of the Rountree petition. Other questions obtain concerning (a), each petitioner's compliance with the requirement of Section 1.106(b) that a person who is not a party to the proceeding shall state with particularity the manner in which he is aggrieved or his interests are adversely affected by the action taken; and (b), Rountree's compliance with Section 1.52 as to verification of the petition.

10. The Commission, however, finds it unnecessary to resolve the questions of compliance with those sections. Having found that the amendments suggested by the petitioners would serve the public interests, the Commission, on its own motion, will amend the pertinent AM, FM, Ed. FM and TV rules[2] to provide that carrier and subcarrier frequencies of the transmitter shall be measured as often as necessary to ensure that the frequency is maintained within the prescribed tolerance, but, in any event, shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

11. In view of the foregoing, and pursuant to authority contained in Sections 4(i), 303(j) and (r) and 405 of the Communications Act of 1934, as amended, and Section 1.106 of the Commission's Rules and

[1] § 1.106(b), in pertinent part: "If the petition is filed by a person who is not a party to the proceeding it shall state with particularity the manner in which he is aggrieved or his interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding".

[2] NAB requested amendment of the AM rules, § 73.60(a) and 73.63(g). We see no reason for such a limitation of the amendments.

Regulations, IT IS ORDERED, on the Commission's own motion, That, effective December 7, 1973, the Commission's Rules and Regulations ARE AMENDED as set forth in the attached Appendix.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

1. Section 73.60(a) is amended to read as follows:

§ 73.60 Frequency measurements.

(a) The carrier frequency of the transmitter shall be measured as often as necessary to ensure that it is maintained within the prescribed tolerance. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

2. Section 73.63(g) is amended to read as follows:

§ 73.63 Auxiliary transmitter.

* * * * * * *

(g) The carrier frequency of the auxiliary transmitter shall be measured as often as is necessary to ensure that it is maintained within the prescribed tolerance. If the transmitter is used daily for a period of more than 40 days, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

3. Section 73.252(a) is amended to read as follows:

§ 73.252 Frequency measurements.

(a) The carrier frequency of the transmitter shall be measured as often as necessary to ensure that it is maintained within the prescribed tolerance. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

4. Section 73.255(f) is amended to read as follows:

§ 73.255 Auxiliary transmitter.

* * * * * * *

(f) The carrier frequency of the auxiliary transmitter shall be measured as often as is necessary to ensure that it is maintained within the prescribed tolerance. If the transmitter is used daily for a period of more than 40 days, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

5. Section 73.295(g) is amended to read as follows:

§ 73.295 Operation under Subsidiary Communications Authorizations.

* * * * * * *

(g) The frequency of each SCA subcarrier shall be measured as often as necessary to ensure that it is kept at all times within 500 Hz of the authorized frequency. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

6. Section 73.297(b) is amended to read as follows:

§ 73.297 Stereophonic broadcasting.

* * * * * * *

(b) Each licensee or permittee engaging in stereophonic broadcasting shall measure the pilot subcarrier frequency as often as necessary to ensure that it is kept at all times within 2 Hz of the authorized frequency. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

7. Section 73.552(a) is amended to read as follows:

§ 73.552 Frequency measurements.

(a) The carrier frequency of transmitters licensed for transmitter power greater than 10 watts shall be measured as often as necessary to ensure that it is maintained within the prescribed tolerance. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

8. Section 73.555(f) is amended to read as follows:

§ 73.555 Auxiliary transmitter.

* * * * * * *

(f) The carrier frequency of the auxiliary transmitter shall be measured as often as is necessary to ensure that it is maintained within the prescribed tolerance. If the transmitter is used daily for a period of more than 40 days, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

9. Section 73.595(g) is amended to read as follows:

§ 73.595 Operation under Subsidiary Communications Authorizations.

* * * * * * *

(g) The frequency of each SCA subcarrier shall be measured as often as necessary to ensure that it is kept at all times within 500 Hz of the authorized frequency. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

10. Section 73.596(b) is amended to read as follows:

§ 73.596 Stereophonic broadcasting.

* * * * * * *

(b) Each licensee or permittee engaging in stereophonic broadcasting shall measure the pilot subcarrier frequency as often as necessary to ensure that it is kept at all times within 2 Hz of the authorized frequency. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

11. Section 73.690(a) is amended to read as follows:

§ 73.690 Frequency measurements.

(a) The visual carrier frequency and the difference between the visual carrier frequency and the center frequency of the aural transmitter shall be measured as often as is necessary to ensure that they are maintained within the prescribed tolerance. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * * * *

F.C.C. 73-1107

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SOUTH ST. PAUL BROADCASTING CO., RADIO STATION KDAN, SOUTH ST. PAUL, MINN. For Modification of License To Change Main Studio Location	File No. BML-2462

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 30, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT. COMMISSIONER HOOKS DISSENTING.

1. The Commission has for consideration the above-captioned application by South St. Paul Broadcasting Co., licensee of AM broadcast station KDAN, South St. Paul, Minnesota, for authority to relocate the station's main studio in downtown St. Paul. Since the applicant proposes to relocate the main studio outside the community of license and at a site other than the transmitter site, it is grantable only upon a waiver of section 73.30(a) of the Commission's rules.[1]

2. In support of this proposal, the applicant maintains that the permanent relocation of its main studio to downtown St. Paul is necessitated by the fact that South St. Paul was ". . . in large measure demolished as a result of an urban renewal project." In support of this contention, the applicant has submitted letters from a South St. Paul realtor and the Executive Director of South St. Paul Economic Development Authority (EDA). However, the letter from the realtor only states that ". . . the business district on Concord Street is going through a redevelopment process, therefore, office space is very limited." Similarly, the letter from EDA merely states that ". . . our downtown area reconstruction plans are now making rapid progress and we expect it to be completed about 1975 or 1976."

3. In the absence of a detailed showing of special circumstances it is contrary to Commission policy to grant a waiver of section 73.30(a) of the rules to authorize the relocation of the main studio of a community's only broadcast service in a nearby central city of considerably greater size. See *Champion Broadcasting System, Inc.* 22 FCC 2d 408 (1970). This policy is premised on section 307(b) of the Communications Act, which calls for an equitable distribution of radio facilities among communities throughout the country. In the present situation, the applicant has referred to the extensive redevelopment of downtown South St. Paul and to the community's depressed economic condition.

[1] This section requires that the main studio be located either in the community to which the station is assigned or at the transmitter site.

However, the applicant has failed to establish that suitable quarters for a main studio are in fact unavailable in South St. Paul or its immediate environs. Nor has the applicant established that the proposed permanent main studio in downtown St. Paul is readily accessible to the residents of South St. Paul. Moreover, station KDAN is primarily obligated to serve South St. Paul. Finally, it is clear that a grant of the present proposal would, for all practical purposes, lead to the abandonment of South St. Paul and the establishment of a *de facto* St. Paul station falling far short of meeting principal city coverage requirements for that community. In these circumstances, the application is dismissible without hearing. *United States et al. v. Storer Broadcasting Company*, 351 U.S. 192 (1956).

4. Accordingly, IT IS ORDERED, That the request for waiver of section 73.30(a) of the rules IS DENIED, and the above-captioned application IS DISMISSED.

5. IT IS FURTHER ORDERED, That the licensee shall terminate broadcasting from its temporary studio site at 7th and Robert Streets, St. Paul, Minnesota, by December 31, 1973, during which time alternate main studio arrangements may be perfected.

6. IT IS FURTHER ORDERED, That the licensee's authority to program from said temporary studio IS REINSTATED AND EXTENDED through December 31, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1042

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SUMMA CORP., LAS VEGAS, NEV. For Renewal of License of Station KLAS-TV, Las Vegas, Nev.	BRCT-357

OCTOBER 3, 1973.

SUMMA CORP.,
Licensee of Station KLAS-TV,
Box 15047,
Las Vegas, Nev. 89109.

GENTLEMEN: This is with reference to your response of December 5, 1972 to the Commission's inquiry in the matter of the complaint filed against Station KLAS-TV, Las Vegas, Nevada, by Mr. James P. Rosner on behalf of Mr. Walter S. Baring and "The Volunteers for Congressman Baring." Mr. Baring was a legally qualified candidate in the September 5, 1972 Nevada primary election seeking the Democratic nomination for the state's at-large Congressional seat. "The Volunteers for Congressman Baring" was legally constituted as Mr. Baring's campaign committee and authorized to purchase political advertising on behalf of his candidacy. Mr. Rosner represented the committee in its efforts to secure such advertising.

In your response to the complaint, you state:

On July 18, 1972, KLAS-TV received a letter from Mr. James P. Rosner * * * requesting 5-minute political program availabilities. In June, 1972, KLAS-TV had adopted a policy not to sell any political time exceeding sixty seconds, except between the hours of 1:30 a.m. and 6:00 a.m. This policy applied to all political candidates, both federal and local. A reply to that effect was sent to Mr. Rosner on July 20, 1972 by * * * [the] Local Sales Manager of KLAS-TV.

In his reply to your response, dated December 12, 1972, complainant states:

[I]n its response KLAS-TV directs the Commission's attention to the station's policy of rejecting five-minute paid political programs in any time periods other than between the hours of 1:30 a.m. and 6:00 a.m. * * * [This] restrictive political policy of the station is contrary to the obligation a broadcaster has to serve the public in good faith.

The question presented by these pleadings is whether your station's stated policy not to sell time to any political candidate, Federal or local, for announcements exceeding sixty seconds in length, except between the hours of 1:30 a.m. and 6:00 a.m., is contrary to the statutory duties of a licensee or any rule or policy of the Commission.

Under the provisions of Sections 307 and 309 of the Communications Act, each licensee is required to serve the public interest, convenience or necessity. In its *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 25 Fed. Reg. 7291, 20 R.R. 1902 (1960), the Commission stated that political broadcasts constitute one of the major elements in meeting that standard. See also *Farmers Educational and Cooperative Union of America, North Dakota Division* v. *WDAY, Inc.*, 360 U.S. 525 (1959) and *Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367, 393–94 (1969). This broad criterion has been applied over the years to the overall programming of licensees. More specifically, with respect to questions of access to broadcast facilities by legally qualified candidates for elective public office, a licensee must govern its conduct according to the "equal opportunities" obligations imposed by Section 315 of the Communications Act and established Commission interpretations of its provisions. One such interpretation has been the Commission's historic policy regarding sale of time to candidates for public office. The licensee was not required to sell time to any particular candidates, but could instead determine which political races were of greatest interest and significance to its service area and then limit the amounts and periods of time available for purchase accordingly, provided it treated all candidates for the same office equally. See *J. B. Lanham*, 40 FCC 342 (1962); *Grover C. Doggette, Esq.*, 40 FCC 346 (1962), and 40 FCC 347 (1962). In so ruling, we expressly cautioned that licensees must observe the public interest consideration of making their facilities available to candidates, but left to the good-faith judgment of the licensee the determination of how its facilities were to be used to serve the public interest. See *Louis Rosenbush, Jr.*, 31 FCC 2d 782 (1971).

On February 7, 1972, the Congress enacted the Federal Election Campaign Act of 1971 (Public Law 92–225), effective April 7, 1972, which amended Sections 312 and 315 of the Communications Act. As amended, Section 312 provides:

(a) The Commission may revoke any station license or construction permit—

> (7) For willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

As we stated in our preliminary interpretation of the new amendments, Public Notice of March 16, 1972 entitled *Use of Broadcast and Cablecast Facilities by Candidates for Public Office*, 37 Fed. Reg. 5796, the provisions of Section 312(a)(7) only apply to legally qualified candidates for Federal elective office and now impose on the overall obligation to operate in the public interest the additional specific requirement that reasonable free access or the purchase of reasonable amounts of time be afforded such candidates.

As to the right to access by candidates for other than Federal elective office, a licensee must comply with its obligations under Section 315 and the above-noted Commission interpretations of its provisions and the public interest standard. To the extent that a licensee's policies regarding the sale of time for political announcements are applied

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to candidates for Federal elective office such policies must comport with both the requirements of Section 315 and the additional obligation imposed by Section 312(a)(7).

As we advised in our Public Notice of March 16, 1972, *supra:*

The test of whether a licensee has met the requirement of the new section (Section 312(a)(7)) is one of reasonableness. The Commission will not substitute its judgment for that of the licensee, but, rather, will determine whether the licensee can be said to have acted reasonably and in good faith in fulfilling his obligations under this section. 37 Fed. Reg. 5804–805, A to Q 3, Section VIII.

In applying this test of reasonableness in particular cases, we must necessarily be guided by the history and underlying policy of the legislation which added Section 312(a)(7) to the Communications Act. Senator Pastore, one of the sponsors of the bill ultimately enacted as the Federal Elections Campaign Act of 1971, explained the purpose of the legislation as follows:

It attempts to give candidates for public office greater access to the media so that they may better explain their stand on the issues, and thereby more fully and completely inform the voters. 117 Cong. Rec. S12872 (daily ed. Aug. 2, 1971).

This statement of purpose was also incorporated verbatim in the Report of the Senate Commerce Committee on the proposed Act of 1971. See S. Rep. No. 96, 92nd Cong., 1st Sess., p. 20 (1971). In reviewing the reasonableness of a licensee's efforts to comply with its obligations under Section 312(a)(7), the Commission must therefore be mindful of Congress' intent to ensure candidates for Federal office adequate opportunity to fully present and discuss their candidacies and hence provide the voters with information necessary for the responsible exercise of their franchise. It is not our understanding, however, that Section 312(a)(7) was intended to require stations to accept all requests for political time during election campaigns to the exclusion of all or most other types of programming or advertising. As we stated in our Public Notice of March 16, 1972, *supra*:

> Important as an informed electorate is in our society, there are other elements in the public interest standard, and the public is entitled to other kinds of programming than political. It was not intended that all or most time be pre-empted for political broadcasts, 37 Fed. Reg. 5804, A to Q 3, Section VIII.

While these policy considerations establish no precise or definite standard of licensee compliance with the requirement of Section 312(a)(7), we do believe that they provide an appropriate guide in looking to the reasonableness of the judgments of licensees in particular factual contexts. Thus, where a licensee's judgments or policies under the circumstances represent a reasonable, good-faith attempt to accommodate both the right of Federal candidates to fully inform the voters of their candidacies and the interest of the public in programming other than political broadcasts, this Commission will be disposed to affirm such judgments and policies as reasonably fulfilling the obligations of a licensee under Section 312(a)(7).

Applying these principles to the facts and circumstances presented here, we cannot find that the policy of your station, as applied to all Federal candidates in the September 5, 1972 primary election

and to Mr. Baring's candidacy for U.S. Congress in particular, reasonably fulfilled your obligations under Section 312(a)(7). A policy of refusing to sell time for campaign messages exceeding sixty seconds in length, except between the hours of 1:30 a.m. and 6:00 a.m., necessarily limits such candidates to one-minute spot announcements in the time periods during which a significant audience would be listening or viewing and allows them to more fully present and discuss their candidacies only during the hours when the vast majority of the potential voting audience is asleep. Here, we wish to emphasize that absent countervailing circumstances or considerations, any policy which in effect restricts Federal candidates to 30- or 60-second spot announcements would appear inconsistent with the full discussion of issues and the complete information of the voters contemplated by the "reasonable access" requirement. As we stated in our Public Notice of March 16, 1972, *supra*, "A commercial station is required (under Section 312(a)(7)) either to provide reasonable amounts of free time or permit purchase of reasonable amounts of time." 37 Fed. Reg. 5805 Q. and A. 6, Section VIII. You have not indicated that your station afforded Federal candidates any free time to inform the public of their candidacies. Nor have you submitted that there was a multiplicity of candidates for Federal office in the September 5, 1972 primary elections,[1] or any other reasonable consideration which necessitated your station's restrictive policy regarding the sale of time. Under these circumstances we cannot conclude that you acted reasonably in affording Federal candidates access to your station's facilities and must find that your station's policy failed to comply with the requirement of Section 312(a)(7).

It should be emphasized that our ruling here is limited to its particular facts and circumstances. In this regard, we recognize that in imposing upon licensees the obligations of Section 312(a)(7), the Congress intended to accord "complete freedom . . . to the broadcaster and candidates to develop specific program formats for the appearance of the candidates." Senate Committee on Commerce Report, *supra*, p. 26. Therefore, rather than engaging in any attempt to formulate specific rules for licensee compliance with the requirement of the new section, we remain committed to leaving licensees and candidates free to work out solutions for reasonable access through discussion, negotiations, and cooperation, subject only to the standard of reasonableness and good faith. We hold here only that under the particular facts and circumstances presented, including your failure to demonstrate countervailing circumstances such as the provision of free time or a multiplicity of candidates, a policy of restricting Federal candidates to the purchase of spot announcements one-minute or less in length, except between the hours of 1:30 a.m. and 6:00 a.m., does not evidence reasonable compliance with the obligations of Section 312(a)(7).

Because this case is one of first impression in specifically construing the provisions of Section 312(a)(7), no sanction is being imposed.

[1] We note that in the Nevada primary elections of September 5, 1972 there was a total of eight candidates for Federal office, three running for the Democratic nomination for U.S. Congressman At-Large and five for the Republican nomination for that same office.

However, you and all other licensees should note that in the future the Commission will expect licensees to pay close attention to their obligations under this section and will take whatever measures appear necessary to ensure compliance with its provisions.

In view of the resolution of the above matters, the Commission has given consideration to your pending application for renewal of license of Station KLAS–TV. The application has been found to be adequate in all respects and Summa Corporation, except for the problem presented by the Issue in Docket No. 15,755, is legally, technically, financially, and otherwise qualified and we find that a grant of the application will serve the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, That the application for Summa Corporation for renewal of license of Station KLAS–TV, Las Vegas, Nevada (BRCT–357) IS GRANTED, subject to the following condition:

This grant is without prejudice to whatever action, if any, the Commission may be required to take as a result of a final decision in Docket No. 15,755 involving Summa Corporation (formerly Hughes Tool Company).

Commissioner Robert E. Lee absent; Commissioner Johnson concuring in the result.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-1130

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Application of TAPPAN ZEE ANSWERING SERVICE, INC. For Consent To Assignment of Station KEC933, Ossining, N.Y. to Radiofone, Corp. of New Jersey	File No. 8173-C2-AL-73

MEMORANDUM OPINION AND ORDER

(Adopted October 31, 1973; Released November 2, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has for consideration the captioned application for consent to assignment of license of Station KEC933 in the Domestic Public Land Mobile Radio Service (DPLMRS) at Ossining, New York from Tappan Zee Answering Service, Inc., (Tappan Zee) to Radiofone Corporation of New Jersey (Radiofone—New Jersey); a petition to deny the application filed by Messages By Radio, Inc. (MBR); Radiofone's opposition; MBR's reply; and pleadings filed by the parties for and against Radiofone—New Jersey's motion for expedited action.

2. MBR is the licensee of Station KEA200 serving the same general area as the station for which consent to assignment of license has been sought. MBR attempts to base standing upon its characterization of Radiofone—New Jersey as a "super carrier", and alleges that grant of the application would make MBR "the next victim of Radiofone's oligopolistic spread of power and control in this geographical vicinity."

3. Petitioner's argument for standing alleging economic injury is not impressive. At the time that the assignment application was filed, Radiofone—New Jersey was the licensee of eleven radio common carrier facilities all of which were located in the New Jersey-Delaware area. We do not feel that eleven such license authorizations make Radiofone—New Jersey, as alleged, a dangerous threat to the economic viability of MBR, especially since those stations presently authorized are not closely proximated to the Ossining area.

4. Although we find that Petitioner's standing argument is questionable, we have nevertheless decided to resolve the case on the merits.

5. MBR has complained about the prospects of being swallowed up by a multi-licensed common carrier, but on the other hand has directed our attention to what it calls a poor financial showing submitted by the applicant. While MBR's argument may not be inconsistent (there is no reason why a large, growing communications concern could not financially overextend itself), nevertheless, we find that Radiofone—

New Jersey itself demonstrates sufficient finances. MBR alleges that a substantial credit arrangement seems to exist between the applicant and its parent, Radiofone Corporation. In addition the submitted balance sheet is attacked for including what Petitioner believes are erroneously listed asset items.

6. There is nothing inherently improper with a parent company's guarantee to support, if need be, a subsidiary's incipient common carrier enterprise, and in any event, it appears that the subsidiary, Radiofone—New Jersey, is in a position to adequately finance the purchase of the station by itself. In this regard, Radiofone—New Jersey lists current assets in excess of current liabilities by $28,000, while the balance of the purchase price for Station KEC933 is less than $19,000.

7. The specific balance sheet accounting items challenged by MBR include "radio common carrier licenses and good will" and "deferred development costs". We find neither item objectionable. The former is comprised for the most part of good will, not of the licenses themselves which carry no proprietary interest as an asset. The latter has been explained as an asset to our satisfaction in a letter written by Price Waterhouse to the applicant. These deferred development costs represent charges against future revenues to be offset as such revenues are earned over a minimum fixed period. Moreover, this practice is consistent with our own past findings in another unrelated case, See *First and Second Plans of Accounting*, per FCC Order in Docket No. 16070, adopted February 14, 1968.

8. Petitioner has also contended that Radiofone—New Jersey failed to submit an adequate public interest statement as required by Item 14, of FCC Form 702. In its response to Item 14, the applicant has set forth details concerning the dispatching for Station KEC933, as well as designating where the ultimate responsibility for the operation of the Station will lay. The individuals charged with these responsibilities are all experienced radio common carrier operators, and as the response to the item correctly mentions, their qualifications are already a matter of record. The application also declares that the assignor's tariff will be adopted by the new licensee, and that any change in this tariff will be made in accordance with proper procedures.

9. We find that a grant of the assignment application will serve the public interest. Although the application does not contain a traditional public interest statement, the qualifications of the principals and the arrangements set forth with respect to the station's operation indicate that a grant of the application will be in the public interest.

10. Accordingly, IT IS ORDERED that the captioned application of Tappan Zee Answering Service, Inc., for consent to assignment of Station KEC933 at Ossining, New York is GRANTED; the petition to deny filed by Messages By Radio, Inc., is DENIED; and the motion for expedited action filed by Radiofone Corporation of New Jersey is rendered MOOT.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-897

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petitions by
TELEDYNE PACKARD BELL, WEST LOS ANGELES, CALIF.
For Waiver of the Comparable Tuning Rules (47 CFR 15.68)

SEPTEMBER 6, 1973.

MR. GEORGE KENT,
Director of Engineering,
Teledyne Packard Bell,
12333 West Olympic Blvd.,
West Los Angeles, Calif. 90064.

DEAR MR. KENT: This concerns Teledyne Packard Bell petitions for waiver of the comparable tuning rules (47 CFR 15.68) received by the Commission on July 16 and July 20, 1973.

One petition is based on a shortage of 3000 units of a 70-position tuner. Without a waiver, this shortage will idle production lines for one model during three weekly periods. The reason for the shortage is the tuner manufacturer's inability to obtain components for 3000 tuners designed for a second receiver model and the conversion of 3000 units for use in that model. Packard Bell asks for a waiver of the rules permitting it to supplement production during the three weekly periods with a total of 3000 continuous tuners. Because Packard Bell appears to be blameless, having ordered adequate quantities of tuners for both models well in advance; because the company is currently producing more comparable receiver models than our rules require; and because the number of units is small, we are granting the request. For the present, we judge that limited tuner supplies and changing Commission regulations make it difficult to inventory tuners in quantities sufficient to guard against delivery delays and mixups. As a general matter, however, we would caution the receiver manufacturing industry not to rely on petitions for waiver in lieu of reasonably prudent inventory policies.

The second petition relates to Packard Bell's efforts to source a satisfactory remotable UHF tuner, in keeping with the company's historic emphasis on remote control and requirements of the comparable tuning rules. At an earlier stage, having failed in efforts to obtain a remotable UHF tuner, it dropped the remote control feature and developed a new model, using a 70-position tuner, on which neither VHF nor UHF tuning was remoted. It now reports, however, that unexpected progress has been made by a tuner supplier in developing a satisfactory remotable UHF tuner, and that it expects to introduce a model remotable on all channels early in 1974. In the interim, however, sale of a new

70-position model lacking the traditional remote control feature is proving difficult and the company is concerned with preserving its share of the remote control market. It asks for permission to provide VHF-only remote control capability in 25% of production of this model until the all-channel remotable model is introduced and, further, that sale of the VHF-only remote control model be permitted through December 1974, to write off design costs for that model.

We are granting this request through June 30, 1974. We are doing so because we are persuaded that the company has worked energetically, and at substantial cost, to reconcile its traditional dependence on remote control capability with the slow development of remotable UHF tuners and the requirements of comparability, and because the company will meet the percentage of models requirement through June 30 even after introducing this new noncomparable model. The June 30 date is selected because we are somewhat skeptical about Packard Bell's target of early 1974 for introduction of the all-channel remote control model, to allow at least partial write-off of design costs, and because 100% compliance is required on or after July 1, 1974. At the same time, we note that Packard Bell has switched directions several times on the question of UHF remote control and caution the company that no extension of this waiver will be granted.

Accordingly, Section 15.68 of the Rules and Regulations is hereby waived to permit shipment of 3000 units of one model equipped with a continuous UHF tuner and a VHF detent tuner and to permit shipment of one receiver model utilizing a remotable VHF tuner and a non-remotable 70-position UHF tuner through June 30, 1974.

Commissioner Robert E. Lee absent. Commissioner Johnson dissenting and Commissioner H. Rex Lee concurring in the result.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

F.C.C. 73-1132

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART 83—
To include in Sections 83.517 and 83.542 provision for the measurement of output power into an artificial load of 50 Ohms nominal impedance

ORDER

(Adopted October 31, 1973; Released November 5, 1973)

BY THE COMMISSION:

1. The Commission has before it a letter from Lorain Electronics Corporation which points out that there is need to update Sections 83.517(c)(2) and 83.542(d)(2) to include therein provision for the measurement of output power under conditions where the transmitter output is connected to a dummy load (artificial antenna) of an impedance which matches the output impedance of solid state transmitters.

2. The output impedance of many of the solid state transmitters currently available have a characteristic output impedance of 50 Ohms. Inclusion in the rules of the suggested amendment would facilitate vessel inspection by Commission personnel to determine compliance with Subparts T and U of Part 83, since it would remove the frequently lengthy process of matching the transmitter output (50 Ohms) to that prescribed in Sections 83.517 and 83.542 (10 Ohms effective resistance and 200 picofarads capacitance). Lastly, it would improve the accuracy of the output power measurement, since it would remove the need to compensate for loss in the matching network.

3. The amendments to the rules, as set forth in the attached Appendix, are issued pursuant to authority contained in Sections 4(i), 303(f) and (r) of the Communications Act of 1934, as amended.

4. The amendments adopted herein are minor in nature and are ones in which the public is not particularly interested, and, hence the prior notice and procedure provisions of 5 U.S.C. 553 are unnecessary.

5. Accordingly, Part 83 of the Commission's rules is AMENDED as shown on the attached Appendix, effective December 14, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In Section 83.517, paragraph (c)(2) is amended to read as follows:

§ 83.517 Medium frequency transmitter.

* * * * * * *

(c) * * *

(2) The transmitter has been demonstrated, or is of a type which has been demonstrated, to the satisfaction of the Commission as capable, with normal operating voltages applied, of delivering not less than 25 watts carrier power for A3 emission or 50 watts peak envelope power for A3H emission on each of the frequencies 2182 and 2638 kHz into either an artificial antenna consisting of a series network of 10 Ohms effective resistance and 200 picofarads capacitance or an artificial antenna of 50 Ohms nominal impedance; Provided, however, That an individual demonstration of the power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required whenever in the judgment of the Commission this is deemed necessary.

2. In Section 83.542, paragraph (d)(2) is amended to read as follows:

§ 83.542 Radiotelephone transmitter.

* * * * * * *

(d) * * *

(2) The transmitter has been demonstrated, or is of a type which has been demonstrated, to the satisfaction of the Commission as capable, with normal operating voltages applied, of delivering not less than 50 watts carrier power for A3 emission or 100 watts peak envelope power for A3H emission on each of the frequencies 2182 and 2003 kHz into either an artificial antenna consisting of a series network of 10 Ohms effective resistance and 200 picofarads capacitance or an artificial antenna of 50 Ohms nominal impedance; Provided, however, That an individual demonstration of the power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required whenever in the judgment of the Commission this is deemed necessary.

F.C.C. 73-1134

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SAMMONS COMMUNICATIONS, INC., D.B.A. TRI-CITIES CABLE TV, PETERSBURG, VA., COLONIAL HEIGHTS, VA., AND ETTRICK, VA. For Certificates of Compliance	CAC-671 (VA054), CAC-672 (VA 052), CAC-673 (VA053).

MEMORANDUM OPINION AND ORDER

(Adopted October 31, 1973; Released November 6, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. Sammons Communications, Inc., dba Tri-Cities Cable TV, operates cable television systems at Petersburg, Colonial Heights, and Ettrick, Virginia, which are located in the Richmond-Petersburg, Virginia television market (#63).[1] The systems currently provide their subscribers with the following television broadcast signals:

WTVR-TV (CBS, Channel 6), Richmond, Virginia
WWBT (NBC, Channel 12), Richmond, Virginia
WCVE-TV (Educ., Channel 23), Richmond, Virginia
WCVW (Educ., Channel 57), Richmond, Virginia
WXEX-TV (ABC, Channel 8), Petersburg, Virginia
WAVY-TV (NBC, Channel 10), Portsmouth, Virginia
WYAH-TV (Ind., Channel 27), Portsmouth, Virginia
WTAR-TV (CBS, Channel 3), Norfolk, Virginia
WVEC-TV (ABC, Channel 13), Hampton, Virginia

2. On June 16, 1972, Tri-Cities filed applications for certificates of compliance requesting authorization to carry the following additional television signals:

WTTG (Ind., Channel 5), Washington, D.C.
WDCA-TV (Ind., Channel 20), Washington, D.C.

[1] Subscriber distribution for the Tri-Cities systems are as follows:
Petersburg, 3,600 subscribers of approximately 35,000 population.
Colonial Heights, 1,055 subscribers of approximately 15,000 population.
Ettrick, 166 subscribers of approximately 3,500 population.
The Petersburg and Ettrick systems began operation in October, 1968, and the Colonial Heights system began in February, 1969. The systems currently have 12 channels available for carriage of broadcast and access services. Of these channels, nine currently are used for television signal carriage and two for automated program originations. In addition, all band FM is carried.

Carriage of these signals is consistent with Section 76.63 of the Commission's Rules.[2] Section 76.251(c) of the Rules, however, requires a major market cable television system operating prior to March 31, 1972, to add one access channel for each new distant signal that it plans to carry. Thus, where three systems propose to add two distant independent signals, as is the case here, a total of six access channels would have to be provided: one public and one educational access channel per system. Tri-Cities requests a temporary partial waiver of this section to permit it to provide one full-time public access and one full-time educational access channel common to all three systems.

3. Petersburg, Colonial Heights, and Ettrick are served by a common headend facility, are geographically contiguous, and it is argued, have common economic, political, and social interests. Tri-Cities states that absolute compliance with the separate access requirements at this time would place an undue burden on the systems, requiring financial resources that it does not now have. On the other hand, Tri-Cities submits that its access proposal will more than satisfy the access needs of the three communities until 1977. The demand for access on the systems to date has been non-existent. Indeed, Tri-Cities has included in its application a letter from the Superintendent of the Petersburg school system stating that the school system will be unable to take advantage of any access services made available by the cable systems prior to 1977. Finally, Tri-Cities asserts that Petersburg and its residential suburbs, Colonial Heights and Ettrick, are relatively small in population. The population and subscriber statistics, it is alleged, make the instant waiver request similar to that sought and granted in *Gerity Broadcasting Co.*, 36 FCC 2d 69 (1972).[3] In order to provide channel capacity for two full time access channels Tri-Cities proposes to carry the distant grandfathered network signals, WTAR–TV, WAVY–TV and WVEC–TV, at varying times on two cable channels. Additionally, noting that educational television station WCVW ends its broadcast day at 4:30 p.m., Tri-Cities proposes to combine its carriage with origination programming. The latter, of course, would be carried only when WCVW is not broadcasting.

4. The sharing of access channels under these circumstances was specifically envisioned in the *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 359 (1972) and we have in the past permitted the practice upon proper showing. See, e.g., *Coldwater Cablevision, Inc.*, 40 FCC 2d 58 (1973); *Halifax Cable TV, Inc.*, FCC 73–679, 41 FCC 2d 887 (1973); and *Gerity Broadcasting Co., supra.* In this case, the Commission be-

[2] On August 3, 1972, Nationwide Communications, Inc., licensee of television broadcast station WXEX–TV, Petersburg, Virginia, filed oppositions to the Tri-Cities applications, requesting that action be deferred until Tri-Cities assured the Commission and WXEX–TV that it would abide by the program exclusivity requirements of Section 76.91 and 76.93 of the Rules with respect to WXEX–TV. On September 13, 1972, Nationwide stated that it had reached a mutually satisfactory agreement with respect to program exclusivity protection with Tri-Cities and requested that its opposition be dismissed. Thus, Tri-Cities applications effectively are unopposed.

[3] Population of the individual communities involved in the *Gerity* decision are: Bay City—49,449; Essexville—4,990; Hampton—6,868; Bangor—1,708; Portsmouth—4,088; Frankenlust—2,032; Monitor—8,743.

lieves that Tri-Cities has made a proper showing, and accordingly, we will grant its waiver request.

In view of the foregoing, the Commission finds that a grant of the subject applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application for Certificate of Compliance" filed by Nationwide Communications, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, That Tri-Cities Cable TV's request for temporary waiver of Section 76.251 of the Commission's Rules IS GRANTED to the extent reflected herein; and

IT IS FURTHER ORDERED, That the applications for certificates of compliance (CAC–671, 672, 673), filed by Tri-Cities Cable TV ARE GRANTED and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73–1123

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
UPSTATE COMMUNITY ANTENNA, INC., CICERO, N.Y.	CAC–487 NY372
UPSTATE COMMUNITY ANTENNA, INC., CLAY, N.Y.	CAC–488 NY373
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 31, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On May 26, 1972, Upstate Community Antenna, Inc., filed the above-captioned applications for certificates of compliance in which it proposes to operate new cable television systems at Cicero and Clay, New York, located within the Syracuse, New York television market (#35).[1] Upstate proposes to carry the following television broadcast signals:

WSYR–TV (NBC, Channel 3), Syracuse, New York
WHEN–TV (CBS, Channel 5), Syracuse, New York
WNYS–TV (ABC, Channel 9), Syracuse, New York
WCNY–TV (Educ., Channel 24), Syracuse, New York
WPIX (Ind., Channel 11), New York, New York
WOR–TV (Ind., Channel 9), New York, New York
WUTV (Ind., Channel 29), Buffalo, New York

These applications are opposed by Onondaga UHF TV, Inc., permittee of Station WONH–TV, Syracuse, New York; Meredith Corporation, licensee of Station WHEN–TV, Syracuse, New York; and W.R.G. Baker Television Corporation, licensee of Station WNYS–TV, Syracuse, New York. Upstate has replied.

2. In its opposition, W.R.G. Baker requests that the Commission consider the above-captioned applications together with a series of other applications filed by New Channels Corporation (CAC–31–34, 63–67, 106, 306) because it claims that all proposals for cable operations in the Syracuse market present common factual and legal questions with respect to impact on local television broadcasting. We reject this request for consolidation. Although it appears that the applications do contain some common issues, the New Channels applications involve other issues, not germane here. It would be inequitable

[1] Clay has a population of 20,000, and Cicero, 2,500. The proposed cable systems will have 20-channel capacities. Of these channels, seven are for carriage of television broadcast signals and three will be used to meet each system's access requirements.

to delay the subject applications pending a determination of these other matters.

3. W.R.G. Baker, Meredith, and Onondaga UHF argue that Upstate should not be allowed to carry the New York City independent signals, nor Station CKWS–TV on a part time basis.[2] The stations base their argument on the Hearing Examiner's Initial Decision in *General Electric Cablevision Corporation, et al.*, FCC 68D–32, 12RR 2d 1171 (1968), which they allege determined that the importation of distant signals into the Syracuse market would result in undesirable economic impact on local stations. This decision was appealed to the Review Board, which held consideration of the matter in abeyance pending the outcome of the Commission's *Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 18397*, 15 FCC 2d 417 (1968). On August 10, 1972, the Review Board terminated the hearing without a final decision.

4. The Examiner's initial decision in the *General Electric* matter did not establish cable impact in the Syracuse market. Under the rule existing at the time (Section 74.1107), the burden rested on the cable television system to rebut a presumption that the importation of distant signals would have a deleterious effect on local television stations and the Examiner found that the cable television systems had not succeeded in overcoming the presumption. The fact that this proceeding was never completed severely limits the weight that can be given to this finding. And under the present cable rules, the burden rests on the objecting party (not the cable system) to prove with specific financial data that there is a need for remedial action. Paras. 71–72, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 169. The opposing parties have not submitted such financial evidence or otherwise persuaded us to accept their contention. See *Spectrum Cable Systems, Inc.*, FCC 73–257, 40 FCC 2d 1019. Thus, this economic impact argument must be rejected.

5. Onondaga UHF also argues that if carriage of three distant independent signals is permitted, one should be deleted as soon as WONH–TV becomes available. Alternatively, Onondaga UHF urges that since it expects to commence operations around March 3, 1974, Upstate should be granted certifications for carriage of only two independents. In support, Onondaga UHF alleges that it is the Commission's intention to delete a previously authorized distant signal from a cable system when an additional independent signal becomes available in a market. This argument must also be rejected. Onondaga UHF was initially granted a construction permit for Station WONH–TV in February, 1967; however, WONH–TV has not yet commenced operations. For purposes of the cable carriage rules, a station that is authorized but not operating is required to be included in a carriage complement for 18 months after the initial grant of its construction permit (Section 76.61(b)). After that, a cable system may carry other signals authorized by Section 76.61(b) and (c) of the Rules. There-

[2] Pursuant to Section 76.61(b)(2)(ii) of the Commission's Rules, Upstate proposes to substitute the programming of independent stations WNEW–TV, New York, New York, and CKWS–TV, Kingston, Ontario, for programs deleted from independent signals. Approval of such substitution is not required in the certification process. See Section 76.13.

fore, since Onondaga UHF has exceeded the 18-month period, Upstate's proposed carriage of three distant independent television signals is consistent with the Rules. Furthermore, as we noted in paragraph 77 of the *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 172: "The emergence of new stations will not require displacement of existing signals because that would cause disruption of service to the public." Nevertheless, we believe that the public interest would be served by limiting the number of distant independent signals to be carried to two, if WONH–TV is on the air when the Upstate cable systems commence operations. Certificates of compliance will be issued when the Commission is advised of which two distant independent stations will be carried in the event that WONH–TV is on the air within the time specified. These certificates will also include authorization to carry WONH–TV, whenever it actually goes on the air.[3]

6. Upstate proposes to operate under franchises granted by the Town of Clay and the Town of Cicero on December 29, 1964 and March 22, 1965, respectively. These franchises contain no statements concerning construction schedule, initial subscriber rates, or maintenance of a local office; however, Upstate states that it will strictly comply with the provisions of Section 76.31. Since the franchises were granted prior to March 31, 1972, only substantial consistency with the franchise provisions of Section 76.31 of the Rules need be demonstrated at this time, according to the note to Section 76.13(a)(4). In view of Upstate's assurances of strict compliance with Section 76.31, we find substantial consistency sufficient to grant the applications until March 31, 1977; however, we believe that the public interest will best be served if issuance of the certificates of compliance is conditioned upon the submission of specific undertakings with respect to the three franchise inadequacies described above.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That "Objection to Applications For Certificates of Compliance" filed June 5, 1972, by Onondaga UHF, Inc., IS GRANTED to the extent indicated in Paragraph 5 above.

IT IS FURTHER ORDERED, That the partial opposition to applications for certificates of compliance filed July 12, 1972, by Meredith Corporation, IS DENIED.

IT IS FURTHER ORDERED, That "Objection to Applications for Certificates of Compliance and Request for Consolidation" filed July 12, 1972, by W.R.G. Baker Television Corporation, IS DENIED.

IT IS FURTHER ORDERED, That the applications (CAC–487, CAC–488) filed by Upstate Community Antenna, Inc., ARE GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[3] On September 19, 1973, WONH–TV received an extension of time to March 19, 1974, to complete construction of its facilities. WONH–TV is entitled to carriage, pursuant to Section 76.61(a) of the Rules. This carriage will be in addition to the three independent signals for which certification has been expressly sought herein, if WONH–TV goes on the air after the Upstate cable systems commence operations.

F.C.C. 73–1122

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of
APPARENT LIABILITY TO WALDRON BROADCASTING CORP., LICENSEE OF STATIONS WCIR AM–FM, BECKLEY, W. VA.

OCTOBER 25, 1973.

Certified Mail—Return Receipt Requested

WALDRON BROADCASTING CORP., *Licensee of WCIR and WCIR–FM, P.O. Box 1063, Beckley, W. Va. 25801.*

GENTLEMEN: This letter constitutes Notice of Apparent Liability pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

A recent field investigation into the operations of Stations WCIR and WCIR–FM, Beckley, West Virginia, revealed several instances of apparent violation of the Communications Act and the Commission's Rules and Regulations. Specifically, it appears that the licensee has violated Sections 315(b) and (c) of the Communications Act; Section 73.120(c) of the Rules concerning broadcasts by candidates for public office; Sections 73.112 and 73.282 of the Rules concerning program logs; and Section 1.613 of the Rules concerning timely filing of network contracts or amendments thereto.

With regard to the apparent violations in connection with broadcasts by candidates for public office, it appears that during the 60 days preceding the general election held November 7, 1972, candidates for public office were charged higher rates for the same class of advertising time than other advertisers were charged, in apparent violation of the "lowest unit charge" provision of Section 315(b) of the Communications Act. For example, a candidate for the West Virginia Supreme Court, John Carrigan, and a candidate for Attorney General, Chauncey Browning, were charged $2.50 for each thirty-second announcement broadcast on WCIR. Candidate for House of Delegates, Mary Merritt, and a candidate for State Senator, Tracy Hylton, were charged $1.75 for each thirty-second announcement on WCIR–FM. However, during the periods covered by the above advertisements, some commercial advertisers on WCIR were charged as little as 91 cents for a thirty-second announcement. During the same period an advertiser on WCIR–FM was charged as little as 56 cents per thirty-second announcement. The details of charges made to candidates are set out with more particularity in attached Appendix A.

Evidence adduced in the field investigation also indicates that during the 60 day period preceding the general election, WCIR charged

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commercial advertisers $5.00 for a five-minute program and thereby established the lowest unit charge at the $5.00 rate. During the period October 3 through November 6, 1972, WCIR charged Rockefeller, candidate for governor, at the rate of $8.00 for a five-minute program, in apparent violation of the lowest unit charge provision of Section 315(b) of the Communications Act of 1934, as amended. Further, the evidence indicates that during the period of October 27 through 29, 1972, gubernatorial candidate Moore was charged at the rate of $6.40 for a five-minute program, in apparent violation of the aforementioned lowest unit charge provision, as well as the uniform rate provision of Section 73.120(c) [1], since Moore received a lower rate than that charged Rockefeller. It should be noted that both Moore and Rockefeller were legally qualified candidates for the same public office. The Moore programs were paid for by George Chambers, who does business as Chambers Oil Company.[2]

In all of the above instances and those listed in Appendix A, the voices of the candidates were used on the announcements or programs.

It further appears that the licensee violated Section 315(c) of the Communications Act of 1934, as amended, since it did not obtain from certain candidates or their representatives written certificates stating that payment of advertising charges for advertising on WCIR and WCIR–FM would not violate any limitation on campaign spending specified in paragraph (1), (2), or (3) of Section 104(a) of the Campaign Communications Reform Act, whichever paragraph was applicable. Specifically, on October 25, 1972, WCIR and WCIR–FM broadcast a speech by President Nixon which was relayed to the stations by the Mutual Broadcasting System. Promotional announcements were broadcast on October 25 prior to the broadcast of the speech. The broadcast of the promotional announcements was sponsored by Chambers Oil Company and Tracy Hylton. The licensee

[1] Section 73.120(c) provides in pertinent part:

(c) Rates and practices. (1) The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall, in each case, be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office. (2) In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part; or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

[2] In a letter dated September 11, 1973, the licensee stated that the above-noted rate discrepancy occurred because Chambers regularly enjoyed a discount of 20 per cent on advertising for his oil company broadcast on the stations. Chambers received the same discount for the Moore programs, and the traffic department at WCIR did not realize that granting the discounts under certain conditions might be unlawful. In a further response dated September 27, 1973, the licensee's attorney stated that some five-minute commercial programs were sold for as low as $5 each during the period when political candidates paid $8. The attorney argued that this was not improper since a non-political advertiser actually receives only 90 seconds of commercial time when it buys a five-minute program, whereas a candidate is free to use the entire five-minute program for advocating his candidacy.

states it is not sure whether the Chambers Oil Company and Tracy Hylton were announced as sponsors of the speech, or were in fact sponsors of the speech. However, examination of the station's invoices shows that the Chambers Oil Company and Tracy Hylton were billed in the amount of $25 each for broadcast of President Nixon's speech on October 25. The certificates required by Section 315(c) of the Communications Act were not obtained by the licensee as a condition for charging for the broadcast of either the speech or the announcements.

On October 27, 1972, another speech by President Nixon was broadcast over WCIR and WCIR–FM, via the Mutual Broadcasting System. This broadcast and promotional announcements concerning it were sponsored locally by D & M Mine Supply. It appears that the licensee also did not obtain the certificates required by Section 315(c) in connection with these broadcasts. It should be noted that the speeches of both October 25 and 27 were sponsored by the Committee to Re-Elect the President, which paid Mutual for the network time. The additional local sponsorship involved West Virginia businesses and persons. The licensee apparently received consideration from these parties in addition to the Mutual network payments for the broadcast of the Nixon speeches.

Apparent violations of the program log Rules were also noted. The October 25, 1972, speech by President Nixon was logged thus:

12:07–12:22, Paid by Comm. to Re-elect Pres., Pres. Nixon Speech, CC, POL.

Thus, no entry was made indicating that the speech was sponsored in part on WCIR by Chambers Oil Company and Tracy Hylton as required by Section 73.112 of the Rules. On the same day (October 25) promotional announcements for the speech were logged thus:

Pres. Speech promo, 10 (sec.), Live, POL.

No entries identifying the sponsor of the announcement were made on the program log. By failing to make the required entries, it appears that the licensee further violated Section 73.112 of the Rules.

The evidence obtained by the investigation also indicates that WCIR and WCIR–FM apparently violated the program log Rules with respect to entries reflecting the duration of commercial matter broadcast on the stations. The WCIR and WCIR–FM program logs for January 23 and 24, 1973, were compared with tape recordings of the stations' programming on these days. No duration indication was entered on the program logs for several advertisements. (The tapes confirm that announcements were broadcast for the advertisers.) For example, although no duration was logged for Lewis Chevrolet commercial announcements on January 23 and 24, 1973, the monitor tapes indicate that an announcement for Lewis Chevrolet was broadcast on January 23 that was 3 minutes 26 seconds in duration. On January 24, 1973, a Lewis Chevrolet announcement of two minutes 42 seconds duration was broadcast. In failing to log the duration of the announce-

ments, the licensee apparently violated Section 73.112 and 73.282 of the Commission's Rules.

The tape recordings of WCIR for January 23 and 24 also indicate that the licensee failed to log the duration of each commercial message contained in the sponsored "Campmeeting Hour" program featuring the Rev. Jimmy Swaggart. The programs were broadcast from 10:00 a.m. to 10:15 a.m. on both days. During the programs, the Rev. Swaggart broadcast advertisements of his record albums totalling five minutes 53 seconds on January 23, and four minutes 16 seconds on January 24, 1973.[3] The WCIR program logs for both days reflect no entries indicating that "Campmeeting Hour" is a commercial program or reflecting the duration of the commercial matter within the program, as required by Section 73.112 of the Commission's Rules. The tape recordings of the program indicate that the Rev. Swaggart repeatedly solicited listeners to send him a "gift of $8.00—and that's below wholesale" in exchange for three record albums.

It also appears that the licensee violated Section 1.613 of the Commission's Rules in that it did not timely file with the Commission certain amendments to affiliation contracts made between the licensee and the Mutual Broadcasting System. The evidence indicates that an existing properly filed affiliation contract was modified by amendment dated March 6, 1972. A letter dated January 30, 1973, further amending the network agreement was sent from Mutual to the licensee allowing the stations to cancel all advertisements for chewing tobacco. Neither of these documents was filed with the Commission as required by Section 1.613 of the Rules.

In response to a Commission letter of inquiry, the president of the licensee stated regarding the apparent violations of the Commission's Rules concerning political advertising and logging thereof:

I have never been particularly active in politics or politically sophisticated. Neither I nor my station manager anticipated all of the problems of logging, classification, and compliance with the Campaign Act which our idea would create. Now, with the wisdom of hindsight, we can see that the whole concept of mixing commercial sponsorship with political speeches was a bad one, and created all kinds of unanticipated problems. *For that reason, we will never again allow a commercial business to sponsor a political announcement, or speech, on WCIR or WCIR–FM.*

The licensee also stated that it was "reasonably sure," but could not prove that it had obtained the required certificates of compliance

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[3] The duration of the commercial announcements here listed includes the time occupied by the playing of the records being advertised. In each instance, a record was played, immediately followed by an announcement promoting its sale as part of a three-album package offered for the price of $8.00. The Commission has ruled that when records are played in conjunction with advertisements for their sale, the duration of the play of the record must be computed as a part of the commercial message. ***KISD, Inc.***, 22 FCC 2d 833 (1970).

concerning campaign spending limitations. No such certificates could be produced by the licensee during the investigation.

Concerning the broadcast and logging of "Campmeeting Hour", the licensee stated that it was not aware that the Rev. Swaggart's program contained what may be considered commercial messages, and for that reason did not log the program accordingly. The licensee attributes the other apparent violations concerning logging of the duration of commercial announcements to its unfamiliarity with the Commission's Rules.

The Commission has considered the circumstances of this case and has determined that pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended, you have incurred an apparent liability of $5,000 for repeated violation of Section 315 of the Communications Act of 1934, as amended; and the following Sections of the Commission's Rules and Regulations: 1.613, 73.112, 73.120, and 73.282. This proceeding is confined to those violations occurring within one year preceding the issuance of this Notice of Apparent Liability.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $5,000 made payable to the Federal Communications Commission.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement must be signed by the licensee; a partner, if the licensee is a partnership; by an officer, if the licensee is a corporation; or by a duly elected or appointed official, if an unincorporated association. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioner Robert E. Lee absent; Commissioners Reid, Wiley and Hooks concurring in the result.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX A

WCIR AM/FM, Schedule of candidates using stations and rates charged in general elections of 1972

Station	Candidate	Announcements		Number and duration of spots	Unit charge	Total charges
		From	To			
WCIR	Carrigan	10/30	11/7	40 (:30)	@2.50	$100.00
WCIR	Carrigan	11/2	11/7	15 (:30)	@2.50	37.50
WCIR	Browning	10/30	11/7	30 (:30)	@2.50	75.00
WCIR	Merritt	10/31	11/7	16 (:30)	@2.50	40.00
WCIR-FM	Merritt	10/31	11/7	20 (:30)	@1.75	35.00
WCIR	Hylton	9/23	11/7	184 (:30)	@2.50	460.00
WCIR-FM	Hylton	11/7	11/7	9 (:30)	@1.75	15.75
WCIR-FM	Hylton	10/7	11/7	66 (:30)	@1.67	110.25
WCIR	Randolph	10/18	11/7	105 (:30)	@3.50	367.50
WCIR	Rockefeller	10/3	11/6	100 (:30)	@3.50	350.00
WCIR	Rockefeller	9/20	9/20	16 (:60)	@3.50	56.00
WCIR	Rockefeller	10/3	11/6	44 (:60)	@3.50	154.00
				11-5 min. programs	@8.00	88.00
WCIR	Rockefeller	8/21	9/3	12-5 min. programs	@8.00	96.00
WCIR	Rockefeller	7/5	8/18	42-5 min. programs	@8.00	336.00
WCIR	Moore	10/27	10/29	10-5 min. programs	@6.40	64.00
WCIR-FM	Moore	10/27	10/29	10-5 min. programs	@4.00	40.00

F.C.C. 73-1115

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of:	
WESTERN TELEVISION CO., RAPID CITY, S. DAK. For Construction Permit for New Television Broadcast Station	File No. BPCT-4640
WESTERN TELEVISION CO., LEAD, S. DAK. For Construction Permit for New Television Broadcast Station	File No. BPCT-4641
WESTERN TELEVISION CO., RAPID CITY, S. DAK. For Construction Permit for Interim Authority	File No. BPCTI-13
WESTERN TELEVISION CO., LEAD, S. DAK. For Construction Permit for Interim Authority	File No. BPCTI-14

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 31, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. We have before us for consideration: (a) the applications (BPCT-4640 and 4641) filed by Western Television Company (Western) for construction permits for new television broadcast stations to operate on channel 7, Rapid City, South Dakota, and channel 5, Lead, South Dakota, and related pleadings; [1] and (b) the applications (BPCTI-13 and BPCTI-14) filed by Western for construction permits for interim authority to operate on channel 7, Rapid City, and channel 5, Lead, South Dakota,[2] and related pleadings.[3]

2. We believe that a brief summary of our prior action with respect to the operation of channel 7, Rapid City, and channel 5, Lead, South Dakota, would be of value to an understanding of the present proceeding. On November 1, 1971, the Commission released its decision, 32 FCC 2d 196, which denied the applications of Eli and Harry Daniels,

[1] The related pleadings are: a petition for waiver of section 73.636 of the Commission's rules, filed July 16, 1973, by Western; an opposition, filed July 26, 1973, by Dakota Broadcasting Co., Inc.; and a reply, filed July 31, 1973, by Western.

[2] Both applications for interim operating authority were accepted for filing by the Commission by Public Notice dated July 25, 1973 (Report No. 9612). However, through inadvertence, file numbers were not assigned to the applications when they were accepted for filing. We have now assigned file numbers BPCTI-13 to the Rapid City interim application and BPCTI-14 to the Lead interim application.

[3] The related pleadings are: a petition to deny or dismiss, filed August 7, 1973, by Dakota Broadcasting Co., Inc.; an opposition, filed August 22, 1973, by Western; and a reply, filed August 29, 1973, by Dakota Broadcasting Co., Inc.

d/b as The Heart of the Black Hills Stations (Black Hills), for renewal of the license of stations KRSD–TV, Rapid City, and KDSJ–TV, Lead, South Dakota. On July 26, 1972, the Commission denied reconsideration, 36 FCC 2d 568, and on February 26, 1973, the Commission's decision was affirmed *Per Curiam* by the United States Court of Appeals for the District of Columbia, *The Heart of the Black Hills Stations* v. *Federal Communications Commission*, Case No. 72, 1804, D.C. Circuit. Subsequently, on May 21, 1973, the Court denied Black Hills' petition for rehearing. Thereafter, in a Public Notice, 41 FCC 2d 281, released June 1, 1973, the Commission stated that it would accept applications for construction permits for new television broadcast stations to operate on either or both channels and that it would consider requests for joint interim operating authority, pursuant to section 1.592(b) of the rules, for either or both channels. The Public Notice also established a "cut-off" date of July 16, 1973, by which substantially complete applications for permanent and interim operating authority had to be tendered for filing in order to receive comparative consideration. In addition, the Public Notice indicated that the Commission had waived section 1.516(c) of the rules and accepted for filing the applications (BPCT–4627 and BPCT–4628) of Dakota Broadcasting Co., Inc., for construction permits for new television broadcast stations to operate on channel 7, Rapid City, and channel 5, Lead, South Dakota. Finally, in an Order, 41 FCC 2d 170, released June 5, 1973, the Commission granted a motion for stay, filed May 14, 1973, by Black Hills of the effective date of the Commission's July 26, 1972, decision which had denied Black Hills' petition for reconsideration.[4] The Order also granted Black Hills temporary authority to continue the operation of stations KRSD–TV and KDSJ–TV until further order of the Commission. Black Hills was granted temporary authority to operate both stations in order to provide continuity of service to the public while the Commission considered requests for interim operating authority.

3. On July 16, 1973, Western filed the above-captioned applications (BPCT–4640 and 4641) for construction permits for new television broadcast stations to operate on channel 7, Rapid City, and channel 5, Lead, South Dakota, and a request for waiver of section 73.636 of the Commission's rules. On the same date, Western also filed the above-captioned applications (BPCTI–13 and 14) for construction permits for interim authority to operate on both channels. Dakota Broadcasting Co., Inc., applicant for permanent authority to operate on channel 7, Rapid City, and channel 5, Lead, has opposed Western's waiver request and its applications for interim operating authority. We will consider the objections to the two sets of applications *seriatim*.

4. Western has requested a waiver of section 73.636 (multiple ownership) of the rules for the limited purpose of having its two applications for permanent operating authority processed. Western's waiver request arises from the fact that Leslie J. Kleven, 36-percent stock-

[4] The July 26, 1972, decision provided, in part, that if Black Hills sought judicial review of the decision, it was authorized to continue to operate both stations until thirty (30) days after the final disposition of its appeal.

holder, President and Director of Western, is also a 72.9-percent stockholder, President, Director and General Manager of Sturgis Radio Co., Inc., licensee of stations KBHB–AM and FM, Sturgis, South Dakota. Since Sturgis lies within the Grade A contours of Western's proposed Rapid City and Lead VHF stations, grant of its application would be precluded under the "one-to-a-market" provisions of section 73.636(a)(1) of the rules. In support of its limited waiver request, Western indicates that Mr. Kleven has acquired considerable broadcast experience which he would devote to the operation of television stations in Rapid City and Lead. Western states that if its applications for permanent authority are granted, Western would accept the imposition of a condition by the Commission which would require Mr. Kleven to dispose of his interests in the AM and FM stations in Sturgis. In opposition, Dakota Broadcasting Co., Inc. (Dakota), asserts that since Western's applications violate the Commission's multiple-ownership rules, Western's waiver request should be denied and its applications dismissed. Furthermore, Dakota states that it would not be in the public interest for the Commission to grant a limited waiver of section 73.636 of the rules and subsequently condition a grant of Western's applications on the divestiture of Mr. Kleven's interest in the Sturgis stations. Specifically, Dakota maintains that while the Commission has authorized Black Hills to continue to operate television stations in Rapid City and Lead on a temporary basis, the public interest would not be served by an extended operation of the stations by Black Hills, particularly in view of its prior broadcast record. Dakota alleges that if the Commission waived its multiple-ownership rules in the present situation, the result would be a lengthly comparative hearing and if Western were the successful applicant, improved television service in Rapid City and Lead would be delayed until there was compliance with any divestiture condition imposed by the Commission.

5. After careful consideration of the arguments raised by Dakota, we are of the view that the public interest would be served by our waiving section 73.636 of the rules for the limited purpose of processing Western's applications for permanent operating authority. Western has made a specific representation that in the event of a grant of its applications, Mr. Kleven will dispose of his interest in stations KBHB–AM and FM. Under the circumstances, we believe that such an unconditional commitment represents a sufficient basis for our further consideration of Western's applications. Our decision in this regard is consistent with our prior action in *Panhandle Broadcasting Co., Inc.*, 34 FCC 2d 460 (1972), in which the authorization of a new VHF television broadcast station was conditioned on the applicant's 40 per cent stockholder, president, and a member of the board of directors, and the members of his immediate family divesting themselves of their interest in AM and FM stations located in Panama City.[5] More-

[5] In this connection, it should be noted that Western has indicated that Marguerite E. Kleven, wife of Leslie J. Kleven, will also divest herself of her 19.7-percent interest in stations KBHB–AM–FM. In addition, Western states that three of its 4.5-percent stockholders, Raymond H. Ricci, Dana E. Caldwell and Robert W. Davis, will resign as employees of stations KBHB–AM and FM and, thereafter, will occupy full-time staff positions with the television stations.

over, we do not agree with Dakota's contention that the interest of the viewing public in the Rapid City-Lead area would best be served by the dismissal of Western's applications and the immediate grant of Dakota's applications for permanent authority. In following such a procedure, the public would be denied the benefits of a choice between competing applicants. While Dakota maintains that designation of the competing applications for comparative hearing would result in a delay in the improvement of television service to Rapid City and Lead, we believe that it is significant to point out that Western's applications for interim operating authority represent a vehicle by which service to the area could be upgraded during the pendency of a comparative hearing. Finally, the duration of the comparative hearing should afford sufficient time for Mr. Kleven to commence negotiations for the possible future sale of his interest in stations KBHB–AM and FM, and thus, make unlikely any significant delay in his compliance with a divestiture condition.

6. We turn now to a consideration of Dakota's opposition to Western's applications for interim operating authority. As we have previously indicated, our Public Notice of June 1, 1973, stated that we would consider substantially complete applications for joint interim operating authority for either or both channels. Dakota asserts that since Western's applications for interim operating authority were not substantially complete when filed, the applications should be dismissed by the Commission. It is stated that Western merely submitted a bare request for interim operating authority without any data to support its legal, technical and financial qualifications. Furthermore, Dakota alleges that while Western's interim requests incorporated by reference its applications for permanent operating authority, that action did not cure the deficiencies since no provisions were made in those applications for technical equipment and financing for the interim operations. In addition, Dakota contends that the Commission's multiple-ownership rules preclude Western's participation in the proposed interim operations and that, in any event, the basic terms of Western's interim proposal are unreasonable and contrary to the public interest. However, Dakota concludes that should the Commission not dismiss Western's interim applications and should the Commission waive its multiple-ownership rules to permit participation by Western's principals in the interim operations, then Dakota would be interested in joining the proposed interim operations.

7. Initially, we note that to the extent that Dakota's objections are directed to the terms of Western's interim proposals, and to the impact of the multiple-ownership rules on the participation by Western's principals in the interim operations, we do not believe that it would be appropriate to consider such matters at this time.[6] Rather, we shall limit our consideration of Western's interim proposals to the question of whether the applications are substantially complete. Western's interim proposals contemplate the construction and leasing of the fa-

[6] With respect to the multiple-ownership question, Western states that it would accept a condition by the Commission, such as a restriction on Mr. Kleven's participation in control or management of the interim operator or the deposit of his stock interest in stations KBHB–AM and FM in trust.

cilities specified in its applications for permanent authority to an interim operator. As part of its interim proposals, Western incorporated by reference the legal, technical, financial and other data set forth in its applications for permanent authority. We find, therefore, that Western has submitted substantially complete applications for interim operating authority. In view of our determination that Western has submitted substantially complete applications for interim operating authority, we anticipate that Western and Dakota will now be able to work out a satisfactory agreement for interim operations in Rapid City and Lead, South Dakota.

8. Accordingly, IT IS ORDERED, That Dakota Broadcasting Co., Inc.'s, opposition to Western Television Company's request for waiver of section 73.636 of the Commission's rules IS HEREBY DENIED and that section 73.636 of the rules IS HEREBY WAIVED for the limited purpose of processing Western Television Company's applications for permanent operating authority.

9. IT IS FURTHER ORDERED, That Dakota Broadcasting Co., Inc.'s, petition to deny or dismiss the applications of Western Television Company for interim operating authority IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1101

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
CHARLES SPENCER WILLIAMS, COMPLAINANT
v.
PACIFIC TELEPHONE & TELEGRAPH CO., DEFENDANT

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 31, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON CONCURRING AND ISSUING A STATEMENT; COMMISSIONER REID CONCURRING IN THE RESULT.

1. The Commission has before it for consideration a formal complaint filed under Section 208 of the Act on May 31, 1973 by Mr. Charles Spencer Williams (hereinafter "Complainant") of Los Angeles, California against The Pacific Telephone and Telegraph Company of San Francisco (hereinafter "Pacific"). Complainant's prior informal complaint concerning this same matter was not resolved to his satisfaction. Complainant contends that he was overcharged by Pacific for a direct dialed telephone call which he placed to Vancouver, British Columbia. Complainant states that the call in question was placed at 11:59 p.m. on December 10, 1972, that the call lasted 51 minutes, and that Pacific erroneously billed him in accordance with the Night and Sunday rates generally applicable for direct dialed calls established between the hours of 6:00 p.m. and 6:00 a.m., i.e., $1.50 for the first 3 minutes plus $0.45 per additional minute rather than the exceptional Late Night rates that apply between the hours of 12:00 midnight and 6:00 a.m., i.e., $1.50 for the first 3 minutes plus $0.30 per additional minutes. Complainant requests a refund of $7.20. Pacific contends in its responsive pleading that it applied the appropriate rate to the call in question. Specifically, Pacific alleges that Section 3.2(C)(4)(a) of AT&T's Tariff F.C.C. No. 263 expressly provides that the time when the connection "is established" determines which rates apply, and that in cases where telephone calls begin in one rate period and end in another rate period the rate in effect at the time when the connection is established applies. Therefore, Pacific alleges that since the connection for the call in question was established before 12:00 midnight (11:59 p.m.) Pacific applied the proper rate. Pacific requests that the complaint be dismissed.

2. We conclude that the call in question was properly rated by Pacific in accordance with Section 3.2(C)(4)(a) of AT&T's Tariff F.C.C. No. 263.

This tariff provision states that the time the connection "is established" determines the relevant period for rating a call. This provision is binding upon Pacific and Complainant alike until changed.

3. However, complaint claims that neither the carrier's operators nor its telephone directories inform customers that all charges are computed at the rate in effect at the time when the connection is established. In our letter of August 23, 1973, we requested Pacific to submit additional information regarding this aspect of complaint's claims. Pacific responded on September 14, 1973 and stated that "[t]he telephone directory does not explain that charges are computed at the rate in effect at the time when connection is established" and that "[t]elephone operators do not normally provide this information either, although they will provide it if questioned on the subject." Pacific stated further that "[o]ur experience has not indicated a misunderstanding on the part of customers generally on this point." Notwithstanding Pacific's view that customers generally are not confused regarding how the applicable rate period is determined, it is our view that Pacific's present practices in this regard should be clarified to militate against any such confusion. The precise time when computation of charges begins and which rating period applies thereto are fundamental to the billing process and any practice of the carrier which may tend to cause confusion on this subject should be corrected. Accordingly, we shall direct that Pacific take appropriate steps, such as by bill inserts or by publishing appropriate clarifying language in the telephone directories, to insure that confusion will not exist on this subject in the future.

4. Accordingly, IT IS ORDERED, That Pacific shall initiate appropriate measures to eliminate customer confusion regarding how the applicable rate period is determined.

5. IT IS FURTHER ORDERED, That Pacific shall, within 30 days from the release date hereof, advise the Commission in writing as to the specific steps it proposes to take to comply with our order herein and shall thereafter achieve such compliance in the form and manner required by the Chief, Common Carrier Bureau.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CONCURRING STATEMENT OF COMMISSIONER NICHOLAS JOHNSON

As the phone company spends millions of our dollars in advertising to tell us, it costs less to make long distance calls after 5:00 P.M. It costs less still to call after midnight. Not, however, as it turned out for Charles Spencer Williams.

Mr. Williams spoke by long distance from 12:00 to 12:50 A.M. one morning, but was shocked to find himself billed at the pre-midnight rate—$7.20 more than the after midnight rate. This came about because Mr. Williams—whether through carelessness, a faulty timepiece, or a desire to create a test case is not clear—*began* speaking at 11:59 P.M.

Administrative necessity requires some easily applicable rule for dealing with this situation. One-half of the cost of long distance calls actually represents the costs of billing people for calls—a good argument for the flat-rate national telephone service. If the phone company also got into computing the proportionate rates for each call, based on when it began and ended, no one would gain but the computer manufacturers and operators who would have a few million more computations to make.

But the fact that the pertinent provisions of this tariff were not clearly announced to the public by Pacific Telephone is a serious defect, and the occasion for my merely concurring in the majority's opinion.

It seems to me truly incredible that Pacific Telephone has to be ordered by this Commission to "initiate appropriate measures to eliminate customer confusion regarding how the applicable rate period is determined" and equally incredible that such steps have not been taken by Pacific Telephone before now! Pacific Telephone has the statutory obligation to operate its common carrier business in the public interest, and yet Charles Spencer Williams—and millions like him—are unable to obtain basic rate period information which anyone would deem vital to the intelligent use of the telephone.

Even though today's action will not aid Mr. Williams in recovering his $7.20, it must be recognized that but for this $7.20 complaint, other Pacific Telephone customers would have been victims of an unannounced rate period computation practice. Hopefully today's decision will be adequate to insure that others will not be parted from their money needlessly without adequate notice from the local telephone monopoly. Under the circumstances, I can bring myself to no more than a reluctant concurrence in this result.

F.C.C. 73-1120

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF ZION-BENTON BROADCASTING CORP., LICENSEE OF RADIO STATION WZBN, ZION, ILL.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted October 25, 1973; Released October 29, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has under consideration its Notice of Apparent Liability dated December 15, 1971, addressed to Zion-Benton Broadcasting Corporation, licensee of Radio Station WZBN, Zion, Illinois.

2. The Notice of Apparent Liability in the amount of five hundred dollars ($500) was issued for violation of Section 317 of the Communications Act of 1934, as amended, and Section 73.119 of the Rules in that the licensee failed to make sponsorship identification.

3. It appears from the circumstances in this case that the licensee broadcast announcements one hundred times on April 1, 2, 3, 5 and 6, 1971, and that the announcements were paid for by Citizens for Dunbar, Koetz, Yonke and Mintern. The text of the announcements was as follows:

The BRUCE DUNBAR ADMINISTRATION and Commissioners Lester Koetz, Andrew Yonke and Michael Mintern pledge themselves * * * [a different pledge is recited for each of the five different announcements] * * * Vote for the BRUCE DUNBAR ~~ADMIN~~ISTRATION and Commissioners Lester Koetz, Andrew Yonke and Michael Mintern in the April 6th election. The preceding has been a paid political announcement.

4. We do not believe that the licensee has met the requirements as to sponsorship identification set forth in Section 317 [1] of the Communications Act of 1934, as amended, or Section 73.119 [2] of the Rules.

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[1] Section 317(a)(1) of the Communications Act states, in part:
All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.

[2] Section 73.119 provides in part as follows:
When a standard broadcast station transmits any matter for which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, such station, the station shall broadcast an announcement that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied.

The group paying for the announcements was not identified, and as we have held, a statement that an announcement is a paid political announcement does not meet the sponsorship identification requirements. *Southwestern Broadcasting Co.*, 9 FCC 2d 224 (1967). Therefore, we find that the licensee violated Section 317 of the Communications Act and Section 73.119 of the Rules in broadcasting the announcements on April 1, 2, 3, 5 and 6, 1971.

5. The Notice of Apparent Liability was mailed to the licensee on December 17, 1971, by Certified Mail—Return Receipt Requested. Although the return receipt indicates that the licensee received the Notice on December 21, 1971, the licensee failed to reply to the Notice within the thirty-day period prescribed by Section 1.621 of the Commission's Rules, and has not made reply subsequent to the expiration of the thirty-day period.

6. In accordance with the provisions of Section 503(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules [3], IT IS ORDERED, That Zion-Benton Broadcasting Corporation licensee of Radio Station WZBN, FORFEIT to the United States the sum of five hundred dollars ($500) for repeated failure to observe Section 317 of the Communications Act and Section 73.119 of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Federal Communications Commission. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within thirty days of the date of receipt of this Memorandum Opinion and Order.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Zion-Benton Broadcasting Corporation, licensee of Radio Station WZBN, Zion, Illinois.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

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[3] Section 1.621 of the Commission's Rules provides, in pertinent part, as follows: "If the licensee * * * fails to take any action in respect to a notification of apparent liability for forfeiture, an order shall be entered establishing the forfeiture as the amount set forth in the notice of apparent liability."